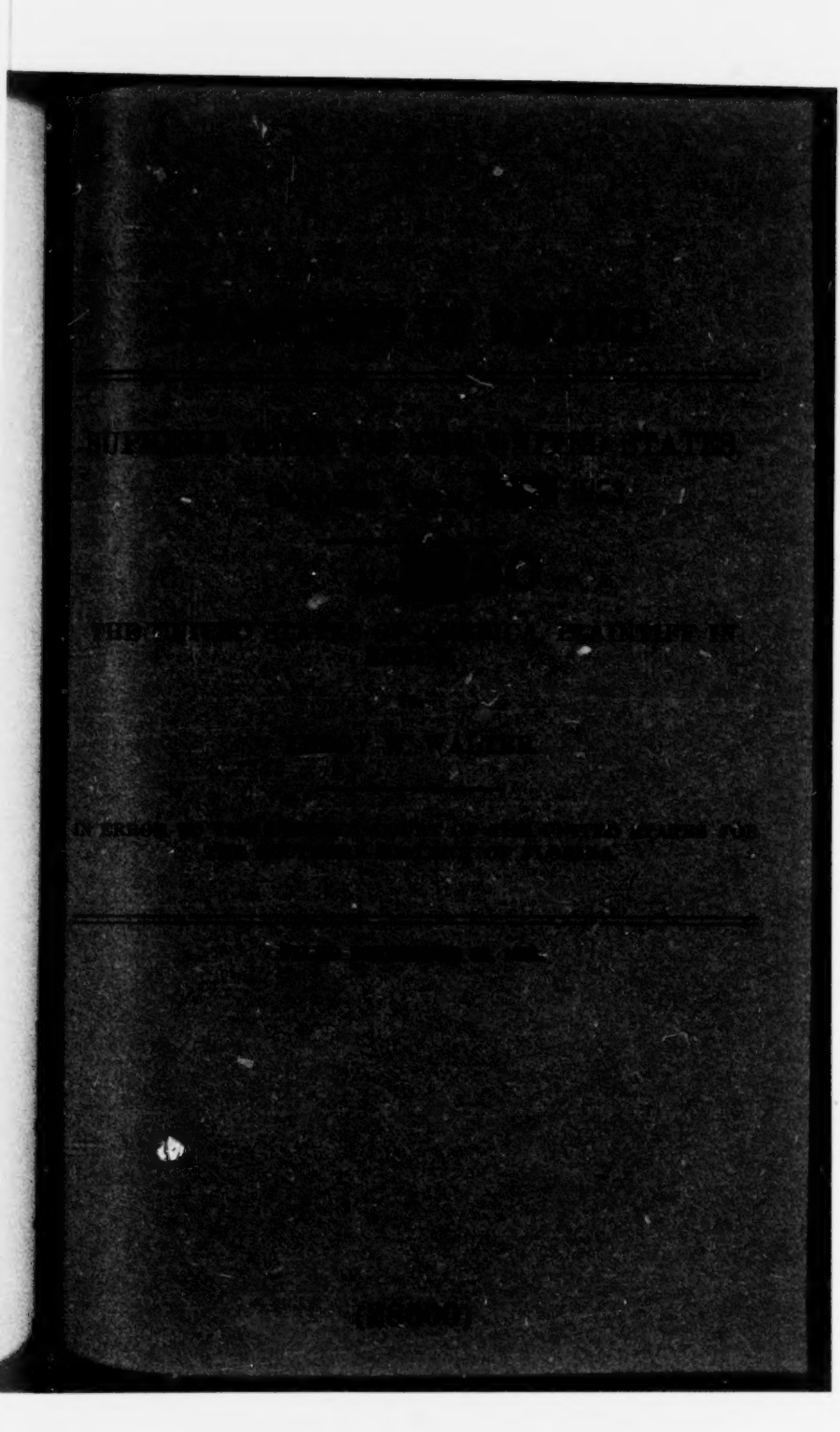

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 223.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

LEROY W. WALTER.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

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A *Writ.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judge of the District Court of the United States for the Southern District of Florida, greeting:

Because of the record and proceedings, and also in the rendition of the decision sustaining a demurrer to an indictment which is in said district court before you, between the United States of America and Leroy W. Walter, a manifest error has happened to the great damage of the said United States of America as by its complaint appears. We, being willing that the error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, that under your hand and seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington on the 15h day of April, A. D. 1921, in the Supreme Court then and there to be held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the 16th day of March, in the year of our Lord one thousand nine hundred and twenty-one.

[SEAL.] EDWIN R. WILLIAMS,
Clerk of the District Court of the United States for the Southern District of Florida.

#1101. United States District Court, Southern District of Florida. United States vs. Leroy W. Walter. Writ of error.

1 In the District Court of the United States of America in and for the Southern District of Florida.

Special June term thereof. A. D. 1920. Held at Jacksonville, Florida.

The grand jurors of the United States of America, duly impaneled, sworn and charged to inquire within and for the Southern District of Florida, upon their oaths present:

That heretofore, to wit, on the 1st day of January, 1919, and thence continuously until the finding of this indictment the United States Shipping Board Emergency Fleet Corporation was a corporation organized and existing under the laws of the District of Columbia; that on the said 1st day of January, 1919, and thence continuously

until the finding of this indictment the United States was a stockholder in said United States Shipping Board Emergency Fleet Corporation, and of which the United States of America is and was at all times and places herein stated the sole owner; and the grand jurors aforesaid upon their oaths aforesaid do further present that heretofore, to wit, on the 23rd day of April, 1919, and hence continuously until the 30th day of April, 1919, at and in the district aforesaid and within the jurisdiction of this court, W. S. Bartlett, alias C. Williams, G. M. Crocker, alias H. Walker, whose christian names are to the grand jurors unknown, Leroy W. Walter, James H. Strang, Henry C. Thomas, and Charles A. Strang unlawfully and knowingly among themselves and with divers other persons to the grand jurors unknown, did combine, conspire, confederate and agree together to commit an offense against the United States, to wit, to make and to cause to be made and to present and to cause to be presented for approval and payment to the proper officer or employee of said United States Shipping Board Emergency Fleet Corporation a certain claim upon and against said United States Shipping
2 Board Emergency Fleet Corporation, which said claim was then and there to be fraudulent in this respect, to wit, that then and there during the period of time last aforesaid the said W. S. Bartlett, alias C. Williams, G. M. Crocker, alias H. Walker, Leroy W. Walter, James H. Strang, Henry C. Thomas, and Charles A. Strang entered into an agreement and conspiracy whereby the said W. S. Bartlett, under the name and alias of C. Williams, and the said G. M. Crocker, under the name and alias of H. Walker, would work and be employed by the said Leroy W. Walter, who was then and there acting on behalf of a firm known as Duval Ship Outfitting Company, to do and perform in divers capacities certain work which was then and there to be performed by said Duval Ship Outfitting Company for said United States Shipping Board Emergency Fleet Corporation, said work to be done in and upon a certain vessel then and there belonging to said United States Shipping Board Emergency Fleet Corporation and then and there known as United States Shipping Board vessel "Caribou"; that the said Leroy W. Walter would collect from said United States Shipping Board Emergency Fleet Corporation by means of weekly vouchers which were to be presented to said United States Shipping Board Emergency Fleet Corporation by a firm known and described as Duval Ship Outfitting Company weekly wages for him, the said W. S. Bartlett, under the name and alias of C. Williams, as a workman then and there to be known and described as a "leading man" on said vessel "Caribou," and would pay or cause to be paid to the said W. S. Bartlett, alias C. Williams, the wages last aforesaid, which claim embodied in said weekly vouchers which were to be presented to said United States Shipping Board Emergency Fleet Corporation as aforesaid was to be fraudulent in this

respect, to wit, that at the time when it was agreed said vouchers would be presented, the said W. S. Bartlett was then and there
3 to be employed and drawing a salary from said United States Shipping Board Emergency Fleet Corporation as and in the capacity of captain of said vessel called "Caribou"; that in his said capacity and employment as captain of said vessel "Caribou," in which capacity he, the said W. S. Bartlett, was then and there to be receiving a salary as aforesaid, while the work was being done upon said vessel called "Caribou" which it was agreed the said W. S. Bartlett would perform as "leading man" as aforesaid, it was then and there to be the duty (and it is expressly charged that it was the duty) of him, the said W. S. Bartlett, to act as assistant inspector and pass upon the question as to whether said work was being done in a fitting, proper and workmanlike manner, and it was also to be the duty of him, the said W. S. Bartlett, to inspect and pass upon the question as to whether the work of a large number of other persons who were then and there employed and to be employed upon said vessel known as "Caribou," at the time when it was agreed the said W. S. Bartlett would work upon said vessel called "Caribou" as a "leading man" as aforesaid, was being done in a fitting, proper and workmanlike manner; and that said claim to be presented as aforesaid was further to be fraudulent in that it was agreed that the material fact that the said W. S. Bartlett was actually employed and being paid to do work as a "leading man" on said vessel "Caribou" and was failing and neglecting to do the work of and act as assistant inspector upon said boat would by means of the alias and fictitious name of C. Williams be concealed and covered up from the said United States Shipping Board Emergency Fleet Corporation. And in said conspiracy it was further agreed that the said Leroy W. Walter would collect from said United States Shipping Board Emergency Fleet Corporation, by means of weekly vouchers to be presented to said United States Shipping Board Emergency Fleet Corporation by a firm known and described as Duval Ship Outfitting Company, weekly
4 wages for him, the said G. M. Crocker under the name and alias of H. Walker, as a workman then and there to be known and described as a "quarterman" on said vessel "Caribou," and would pay or cause to be paid to the said G. M. Crocker, alias H. Walker, the wages last aforesaid; which claim embodied in said weekly vouchers to be presented to said United States Shipping Board Emergency Fleet Corporation as aforesaid was to be fraudulent in this respect, to wit, that at the time when it was agreed said vouchers would be presented, the said G. M. Crocker was then and there to be employed and drawing a salary from said United States Shipping Board Emergency Fleet Corporation as and in the capacity of chief engineer of said vessel called "Caribou" that in his said capacity and employment as chief engineer of said vessel "Caribou,"

in which capacity he, the said G. M. Crocker, was then and there to be receiving a salary as aforesaid, while the work was being done upon said vessel called "Caribou" which it was agreed the said G. M. Crocker would perform as "quarterman" as aforesaid, it was then and there to be the duty (and it is expressly charged that it was the duty) of him, the said G. M. Crocker, to act as assistant inspector and pass upon the question as to whether said work was being done in a fitting, proper and workmanlike manner, and it was also to be the duty of him, the said G. M. Crocker, to inspect and pass upon the question as to whether the work of a large number of other persons who were then and there employed and to be employed upon said vessel known as "Caribou" at the time when it was agreed the said G. M. Crocker would work upon said vessel called "Caribou" as a "quarterman" as aforesaid, was being done in a fitting, proper and workmanlike manner; and that said claim to be presented as aforesaid was further to be fraudulent in that it was agreed that the material fact that the said G. M. Crocker was actually employed and being paid to do work as a "quarterman" on said vessel "Caribou" and was failing and neglecting to do the work of and act as assistant inspector upon said boat, would, by means of the alias and fictitious name of H. Walker, be concealed and covered up from the said United States Shipping Board Emergency Fleet Corporation.

Overt act No. 1.

That in pursurance of said unlawful conspiracy and agreement and to effect the object thereof the said W. S. Bartlett and G. M. Crocker, at and in the district aforesaid and within the jurisdiction of this court, on the 23rd day of April, 1919, had themselves placed on the pay roll of the Duval Ship Outfitting Company under the names of C. Williams and H. Walker, respectively, as workmen on said United States Shipping Board Emergency Fleet Corporation vessel "Caribou," while they, the said W. S. Bartlett and G. M. Crocker, were drawing salaries from the said United States Shipping Board Emergency Fleet Corporation as captain and chief engineer, respectively, of said vessel "Caribou," and while said W. S. Bartlett and said G. M. Crocker as such captain and chief engineer, respectively, were under the duty and obligation to act as and perform the duties of assistant inspectors of said vessel as aforesaid.

Overt Act No. 2.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof the said Charles A. Strang, James H. Strang, and Leroy W. Walter placed said W. S. Bartlett and G. M. Crocker on the pay roll of the Duval Ship Outfitting Company under the names of C. Williams and H. Walker, respectively, as workmen on the said United States Shipping Board Emergency

Fleet Corporation vessel "Caribou," while they, the said W. S. Bartlett and G. M. Crocker, were drawing salaries from the said United States Shipping Board Emergency Fleet Corporation
6 as captain and chief engineer, respectively, of said vessel "Caribou," and while said W. S. Bartlett and said G. M. Crocker as such captain and chief engineer, respectively, were under the duty and obligation to act as and perform the duties of assistant inspectors of said vessel as aforesaid.

Overt act No. 3.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof, on, to wit, April 23, 1919, at Jacksonville, Florida, in the district aforesaid and within the jurisdiction of this court the said W. S. Bartlett, under the name of C. Williams, did work as a "leading man" on said vessel "Caribou."

Overt act No. 4.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof, on, to wit, April 23, 1919, at Jacksonville, Florida, in the district aforesaid and within the jurisdiction of this court G. M. Crocker, under the name of H. Walker, did work as a "quarterman" on said vessel "Caribou."

Overt act No. 5.

And that in further pursuance of said unlawful conspiracy and agreement, and to effect the object thereof, on, to wit, the 28th day of April, 1919, at Jacksonville, Florida, in the district aforesaid and within the jurisdiction of this court the said W. S. Bartlett, under the name of C. Williams did draw wages and receive pay in the amount of forty-seven and 04/100 ($47.04) dollars from said Duval Ship Outfitting Company for work done on said vessel Caribou" by said W. S. Bartlett as a "leading man" as aforesaid.

Overt act No. 6.

And that in further pursuance of said unlawful conspiracy
7 and agreement and to effect the object thereof, on, to wit, the 28th day of April, 1919, at Jacksonville, Florida, in the district aforesaid and within the jurisdiction of this court the said G. M. Crocker, under the name of H. Walker did draw wages and received pay in the amount of seventy-four and 24/100 ($74.24) dollars from said Duval Ship Outfitting Company for work done on said vessel "Caribou" by said G. M. Crocker as a "quarterman" as aforesaid.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

SECOND COUNT.

And the grand jurors aforesaid upon their oats aforesaid do further present:

That heretofore, to wit, on the 1st day of January, 1919, and thence continually until the finding of this indictment the United States Shipping Board Emergency Fleet Corporation was a corporation organized and existing under the laws of the District of Columbus; that on the said 1st day of January, 1919, and thence continuously until the finding of this indictment, the United States was a stockholder in said United States Shipping Board Emergency Fleet Corporation, and of which the United States of America is and was at all times and places herein mentioned the sole owner; and the grand jurors aforesaid upon their oaths aforesaid do further present that heretofore, to wit, on the 23rd day of April, 1919, and thence continuously until the 30th day of April, 1919, at and in the district aforesaid and within the jurisdiction of this court, W. S. Bartlett, alias C. Williams, G. M. Crocker, alias H. Walker, whose Christian names are to the grand jurors unknown, Leroy W. Walter, James H. Strang, Henry C. Thomas, and Charles A. Strang unlawfully and knowingly among themselves and with divers other persons to the grand jurors unknown, did combine, conspire,
8 confederate, and agree together to commit an offense against the United States, to wit, to obtain the payment and approval of certain fraudulent claims known to them, the said W. S. Bartlett, alias C. Williams, G. M. Crocker, alias H. Walker, Leroy W. Walter, James H. Strang, Henry C. Thomas, and Charles A. Strang, to be fraudulent, against said United States Shipping Board Emergency Fleet Corporation in that then and there during the period of time last aforesaid the said W. S. Bartlett, alias C. Williams, G. M. Crocker, alias H. Walker, Leroy W. Walter, James H. Strang, Henry C. Thomas, and Charles A. Strang entered into and agreement and conspiracy whereby the said W. S. Bartlett, under the name and alias of C. Williams, and the said G. M. Crocker, under the name and alias of H. Walker, would work and would be employed by said Leroy W. Walter, who was then and there acting on behalf of a firm known as Duval Ship Outfitting Company, to do and perform in divers capacities certain work which was then and there to be performed by said Duval Ship Outfitting Company for said United States Shipping Board Emergency Fleet Corporation, which said work to be done in and upon a certain vessel then and there belonging to said United States Shipping Board Emergency Fleet Corporation and then and there known as the United States Shipping Board vessel "Caribou," and in said conspiracy it was further agreed that the said Leroy W. Walter would collect from said United States Shipping Board Emergency Fleet Corporation by means of weekly vouchers to be presented to said United States Shipping Board Emergency Fleet Corporation by a firm known and designated as

Duval Ship Outfitting Company, weekly wages for him, the said W. S. Bartlett, under the name and alias of C. Williams, as a workman then and there to be known and described as a "leading man" on said vessel "Caribou," and would pay or would cause to be paid to said W. S. Bartlett, alias C. Williams, the wages last aforesaid; that at the time of forming of said conspiracy and of the doing of all the acts herein set forth the said W. S. Bartlett was then and there to be employed and drawing a salary from said United States Shipping Board Emergency Fleet Corporation as and in the capacity of captain of said vessel called "Caribou"; that in his said capacity and employment as captain of said vessel "Caribou," in which capacity he, the said W. S. Bartlett, was then and there to be receiving a salary as aforesaid, and while the work was being done upon said vessel called "Caribou," which it was agreed the said W. S. Bartlett should perform as "leading man" as aforesaid, it was then and there to be the duty (and it is expressly charged that it was the duty) of him, the said W. S. Bartlett, to act as assistant inspector and pass upon the question as to whether said work was being done in a fitting, proper, and workmanlike manner, and it was also to be the duty of him, the said W. S. Bartlett, to inspect and pass upon the question as to whether the work of a large number of other persons who were then and there employed and to be employed upon said vessel known as "Caribou" at the same time when it was agreed the said W. S. Bartlett would work upon said vessel "Caribou" as a "leading man," was being done in a fitting, proper, and workmanlike manner; that in said conspiracy it was further agreed that the material fact that the said W. S. Bartlett was actually employed and being paid to do the work as a "leading man" on said vessel called "Caribou" and was so so failing and neglecting to do the work of and act as assistant inspector upon said vessel by means of a trick, scheme, and device, to wit, the alias and fictitious name, C. Williams, would be concealed and covered up from said United States Shipping Board Emergency Fleet Corporation. And in said conspiracy it was further agreed that the said Leroy W. Walter would collect from said United States Shiping Board Emergency Fleet Corporation, by means of weekly vouchers to be presented to said United States Shipping Board Emergency Fleet Corporation by a firm known and designated as Duval Ship Outfitting Company, weekly wages for him, the said G. M. Crocker, under the name and alias of H. Walker, as a workman then and there to be known and described as a "quarterman" on said vessel called "Caribou," and would pay or cause to be paid to the said G. M. Crocker, alias H. Walker, the wages last aforesaid; that at the time of the forming of said conspiracy and of the doing of all the acts herein set forth the said G. M. Crocker was then and there employed and drawing a salary from said United States Shipping Board Emergency Fleet Corporation as and in the capacity of chief engineer of said vessel called "Cari-

bou"; that in said capacity and employment as a chief engineer of said vessel called "Caribou," in which capacity he, the said G. M. Crocker, was then and there to be receiving salary as aforesaid, and while the work was being done upon said vessel which it was agreed the said G. M. Crocker should perform as "quarterman," as aforesaid, it was then and there to be the duty of him, the said G. M. Crocker, to act as assistant inspector and pass upon the question as to whether or not said work was being done in a fitting, proper, and workmanlike manner, and it was also to be the duty (and it is expressly charged that it was the duty) of him, the said G. M. Crocker, to inspect and pass upon the question as to whether the work of a large number of persons who were then and there employed and to be employed on said vessel "Caribou" at the time when it was agreed the said G. M. Crocker would work upon said vessel "Caribou" as a "quarterman," was being done in a fitting, proper, and workmanlike manner; that in said conspiracy it was further agreed that the material fact that the said G. M. Crocker was actually employed and being paid to do the work as a "quarterman"
11 on said vessel "Caribou" and was failing and neglecting to do the work of and act as assistant inspector upon said boat would, by means of a trick, scheme, and device, to wit, the alias and fictitious name H. Walker, be concealed and covered up from said United States Shipping Board Emergency Fleet Corporation.

Overt act No. 1.

That in pursuance of said unlawful conspiracy and agreement and to effect the object thereof the said W. S. Bartlett and G. M. Crocker, at and in the district aforesaid and within the jurisdiction of this court, on the 23rd day of April, 1919, had themselves placed on the pay roll of the Duval Ship Outfitting Company under the names of C. Williams and H. Walker, respectively, as workmen on said United States Shipping Board Emergency Fleet Corporation vessel "Caribou," while they, the said W. S. Bartlett and G. M. Crocker, were drawing salaries from the said United States Shipping Board Emergency Fleet Corporation as captain and chief engineer, respectively, of said vessel "Caribou," and while said W. S. Bartlett and G. M. Crocker as captain and chief engineer, respectively, were under the duty and obligation to act as and perform the duties as assistant inspectors of the United States Shipping Board Emergency Fleet Corporation as aforesaid.

Overt act No. 2.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof the said Charles A. Strang, James H. Strang, and Leroy W. Walter placed said W. S. Bartlett and G. M. Crocker on the pay roll of the Duval Ship Outfitting

Company under the names of C. Williams and H. Walker, respectively, as workmen on the said United States Shipping Board Emergency Fleet Corporation vessel "Caribou," while they, the said
W. S. Bartlett and G. M. Crocker, were drawing salaries from
12 the said United States Shipping Board Emergency Fleet Corporation as captain and chief engineer, respectively, on said vessel "Caribou," and while said W. S. Bartlett and G. M. Crocker as captain and chief engineer, respectively, were under the duty and obligation to act and perform the duties as assistant inspectors of the United States Shipping Board Emergency Fleet Corporation as aforesaid.

Overt act No. 3.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof on, to wit, April 23, 1919, at Jacksonville, Florida, in the district aforesaid and within the jurisdiction of this court the said W. S. Bartlett, under the name of C. Williams did work as a "leading man" on said vessel "Caribou."

Overt act No. 4.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof, on, to wit, April 23, 1919, at Jacksonville, Florida, in the district aforesaid and within the jurisdiction of this court G. M. Crocker, under the name of H. Walker, did work as a "quarterman" on said vessel "Caribou."

Overt act No. 5.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof, on, to wit, the 28th day of April, 1919, at Jacksonville, Florida, in the district aforesaid and within the jurisdiction of this court the said W. S. Bartlett, under the name of C. Williams did draw wages and receive pay in the amount of forty-seven and 04/100 ($47.04) dollars from said Duval Ship Outfitting Company for work done on said vessel "Caribou" by said W. S. Bartlett as a "leading man" as aforesaid.

13 Overt act No. 6.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof, on to wit, the 28th day of April, 1919, at Jacksonville, Florida, in the district aforesaid and within the jurisdiction of this court, the said G. M. Crocker, under the name of H. Walker, did draw wages and received pay in the amount of seventy-four and 24/100 ($74.24) dollars from said Duval Ship Outfitting Company for work done on said vessel "Caribou" by said G. M. Crocker as a "quarterman" as aforesaid.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

THIRD COUNT.

And the grand jurors aforesaid upon their oaths aforesaid do further present:

That heretofore, to wit, on the 1st day of January, 1919, and thence continuously until the finding of this indictment the United States Shipping Board Emergency Fleet Corporation was a corporation organized and existing under the laws of the District of Columbia; that on the said 1st day of January, 1919, and thence continuously until the finding of this indictment the United States was a stockholder in said United States Shipping Board Emergency Fleet Corporation, and of which the United States of America is and was at all times and places herein mentioned the sole owner; and the grand jurors aforesaid upon their oaths aforesaid do further present that heretofore, to wit, on the 23rd day of April, 1919, and thence continuously until the 30th day of April, 1919, at and in the district aforesaid and within the jurisdiction of this court, W. S. Bartlett, alias C. Williams, G. M. Crocker, alias H. Walker, whose christian names are to the grand jurors unknown, Leroy W. Walter,
14 James H. Strang, Henry C. Thomas, and Charles A. Strang unlawfully and knowingly among themselves and with divers other persons to the grand jurors unknown, did combine, conspire, confederate and agree together to defraud the United States of America, in this, to wit, that then and there during the period of time last aforesaid, W. S. Bartlett, alias C. Williams, and G. M. Crocker, alias H. Walker, Leroy W. Walter, James H. Strang, Henry C. Thomas, and Charles A. Strang entered into a conspiracy and agreement whereby it was agreed that the said W. S. Bartlett, under the name and alias of C. Williams, and the said G. M. Crocker, under the name and alias of H. Walker, would work and be employed by the said Leroy W. Walter, who was then and there acting on behalf of a firm known as Duval Ship Outfitting Company, to do and perform in divers capacities certain work which was then and there to be performed by said Duval Ship Outfitting Company for said United States Shipping Board Emergency Fleet Corporation, said work to be done in and upon a certain vessel then and there belonging to said United States Shipping Board Emergency Fleet Corporation, and then and there known as United States Shipping Board vessel "Caribou"; that the said W. S. Bartlett, alias C. Williams, would then and there work and be employed as a workman then and there to be known and described as a "leading man" on said vessel "Caribou," and that the said G. M. Crocker, under the name and alias of H. Walker, would be employed as a workman then and there to be known and described as a "quarterman" on said vessel "Caribou"; that at the time when it was agreed the said

W. S. Bartlett, alias C. Williams, and the said G. M. Crocker, alias H. Walker, would work and be employed as aforesaid on said vessel "Caribou" that the said W. S. Bartlett and the said G. M. Crocker would then and there at the same time be employed and work-
15 ing for said United States Shipping Board Emergency Fleet Corporation in the capacity of captain and chief engineer, respectively, of said vessel called "Caribou"; that in said capacities of captain and chief engineer, respectively, of said vessel called "Caribou," in which capacities the said W. S. Bartlett and the said G. M. Crocker were then to be employed and to be receiving salary as aforesaid, it was then and there the duty of them, the said W. S. Bartlett and G. M. Crocker, to act as assistant inspector and to pass upon the question as to whether certain work then and there being done in and upon said vessel called "Caribou" by divers persons was being done in a fitting, proper, and workmanlike manner, and especially was it the duty of them, the said W. S. Bartlett and G. M. Crocker, respectively, to pass upon the question as to whether or not the very work which it was agreed the said W. S. Bartlett and G. M. Crocker would personally perform, was being done in a fitting, proper, and workmanlike manner; that by reason of the fact that the said W. S. Bartlett and the said G. M. Crocker were to be employed as aforesaid by said Leroy W. Walter, and actually perform certain work in and upon said vessel called "Caribou" in the capacity of "leading man" and "quarterman," respectively, as aforesaid, said United States Government, as represented by said United States Shipping Board Emergency Fleet Corporation, would (and it is charged that said United States Government thereby actually did) lose the benefit of the services of said W. S. Bartlett and G. M. Crocker in their capacities of captain and chief engineer, respectively, of said vessel "Caribou," and that said W. S. Bartlett and G. M. Crocker would, and actually did, neglect to perform their duties as assistant inspectors of the work being done on said vessel as aforesaid, which duties as assistant inspectors then and there devolved upon said W. S. Bartlett and said G. M. Crocker by virtue of the fact that they were then and there employed and receiving
16 salary from the United States Shipping Board Emergency Fleet Corporation in the capacity of captain and chief engineer, respectively, of said vessel "Caribou" as aforesaid; that it was further agreed that the fact that the said W. S. Bartlett and the said G. M. Crocker were personally performing certain work and labor upon said vessel "Caribou" and were neglecting to perform their duties as captain and chief engineer, respectively, which duties as captain and chief engineer, respectively, were then and there to act as assistant inspectors as aforesaid, would be covered up and concealed from the United States as represented by said United States Shipping Board Emergency Fleet Corporation by means of the alias and fraudulent and fictitious names C. Williams and H. Walker, respectively; that by means of the scheme aforesaid the said United States as represented by said United States Ship-

ping Board Emergency Fleet Corporation would be, and it is charged that said United States Shipping Board Emergency Fleet Corporation actually was, defrauded out of the services of said W. S. Bartlett and G. M. Crocker in the capacity of captain and chief engineer, respectively, of said vessel.

Overt act No. 1.

That in pursuance of said unlawful conspiracy and agreement and to effect the object thereof the said W. S. Bartlett and G. M. Crocker, at an in the district aforesaid and within the jurisdiction of this court on the 23rd day of April, 1919, had themselves placed on the payroll of the Duval Ship Outfitting Company under the names of C. Williams and H. Walker, respectively, as workmen on said United States Shipping Board Emergency Fleet Corporation vessel "Caribou," while they, the said W. S. Bartlett and G. M. Crocker, were drawing salaries from the said United States Shipping Board Emergency Fleet Corporation as captain and chief engineer, respectively, of said vessel "Caribou," and while said W. S. Bartlett and G. M. Crocker as captain and chief engineer,
17 respectively, were under the duty and obligation to act as and perform the duties as assistant inspectors of the United States Shipping Board Emergency Fleet Corporation as aforesaid.

Overt act No. 2.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof the said Charles A. Strang, James H. Strang, and Leroy W. Walter placed said W. S. Bartlett and G. M. Crocker on the pay roll of the Duval Ship Outfitting Company under the names of C. Williams and H. Walker, respectively, as workmen on the said United States Shipping Board Emergency Fleet Corporation vessel "Caribou," while they, the said W. S. Bartlett and G. M. Crocker, were drawing salaries from the United States Shipping Board Emergency Fleet Corporation as captain and chief engineer, respectively, on said vessel "Caribou," and while said W. S. Bartlett and G. M. Crocker as captain and chief engineer, respectively, were under the duty and obligation to act and perform the duties as assistant inspectors of the United States Shipping Board Emergency Fleet Corporation as aforesaid.

Overt act No. 3.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof, on, to wit, April 23, 1919, at Jacksonville, Florida, in the district aforesaid and within the jurisdiction of this court, the said W. S. Bartlett under the name of C. Williams did work as a "leading man" on said vessel "Caribou."

Overt act No. 4.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof, on, to wit, April
18 23, 1919, at Jacksonville, Florida, in the district aforesaid and within the jurisdiction of this court G. M. Crocker, under the name of H. Walker, did work as a "quarterman" on said vessel "Caribou."

Overt act No. 5.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof, on, to wit, the 28th day of April, 1919, at Jacksonville, Florida, in the district aforesaid and within the jurisdiction of this court, the said W. S. Bartlett, under the name of C. Williams did draw wages and received pay in the amount of forty-seven and 04/100 ($47.04) dollars from said Duval Ship Outfitting Company for work done on said vessel "Caribou" by said W. S. Bartlett as a "leading man" as aforesaid.

Overt act No. 6.

And that in further pursuance of said unlawful conspiracy and agreement and to effect the object thereof on, to wit, the 28th day of April, 1919, at Jacksonville, Florida, in the district aforesaid and within the jurisdiction of this court, the said G. M. Crocker, under the name of H. Walker, did draw wages and received pay in the amount of seventy-four and 24/100 ($74.24) dollars from said Duval Ship Outfitting Company for work done on said vessel "Caribou" by said G. M. Crocker as a "quarterman" as aforesaid.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

HERBERT S. PHILLIPS,
United States Attorney.

(Endorsed:) A true bill. L. Price, foreman. Filed this 26th day of July, A. D. 1920. Edwin R. Williams, clerk. Bail, $2500.00 each, Rhydon M. Call, Judge.

19 In the United States District Court for the Southern District of Florida.

UNITED STATES OF AMERICA
vs.
LEROY W. WALTER ET AL. } Indictment No. 1101.

Demurrer to indictment and each count thereof.

And now comes Leroy W. Walter in his own proper person into court, and by his attorney, John W. Dodge, and having heard said indictment read, says that the said indictment and the matters therein contained in manner and form as the same are above stated

and set forth, are not sufficient in law, and that he, the said Leroy W. Walter, is not bound by the law of the land to answer the same, and this he is ready to verify; and he here shows to the court:

1st. Said indictment failes to set forth or charge any crime or offense against the laws of the United States.

2nd. There are not sufficient facts alleged in said indictment and each count thereof, charging any offense or crime under the laws of the United States.

3rd. There are no sufficient allegations setting forth the scheme or device and means or way of accomplishing a fraud and of a fraudulent claim in said indictment or any count thereof.

4th. The alleged conspiracy and schemes do not sufficiently describe a criminal offense under the laws of the United States.

5th. The alleged means and ways are not shown to be unlawful in connection with the alleged conspiracy.

6th. No unlawful act is set forth in the said indictment or any count thereof.

20 7th. No lawful act is alleged or shown to have been accomplished or brought about by any unlawful means by the defendant herein.

8th. No actual knowledge of the various alleged unlawful means set forth in the indictment or any count thereof is shown or alleged to have been had by the defendant.

9th. There is no positive and definite allegation that the claim set forth for presentation or payment or approval was in fact false.

10th. There are no sufficient allegations showing the claim set forth in the indictment to be in fact false, fictitious, or fraudulent.

11th. There are no sufficient and specific allegations that the defendant knew the alleged claim to be false, fictitious, or fraudulent.

12th. The act of Congress under which said indictment and each count thereof is framed is unconstitutional and void so far as the same applies to any claim against a corporation in which the United States of America is a stockholder, or any conspiracy to defraud any corporation in which the United States of America is a stockholder.

13th. The allegations of said indictment and each count are based upon an act of Congress which is unconstitutional and void so far as said act applies to a corporation in which the United States of America is a stockholder.

14th. The allegations of said indictment show upon their face that the alleged criminal offense is not against the United States Government, but is against a corporation under the laws of the District of Columbia, and Congress exceeded its authority in attempting to make criminal any act which might affect said corporation

solely because the United States Government is a stockholder

21 in such corporation, and the act of Congress upon which said indictment and each count thereof is based is therefore unconstitutional and void, and the said indictment charges no crime against the United States under the Constitution of the United States.

Wherefore, for want of sufficient indictment in this behalf the said Leroy W. Walter prays judgment, and that by the court he may be dismissed and discharged from the said premises in the said indictment and each count thereof specified.

JNO. W. DODGE,
Attorney for defendant Leroy W. Walter.

(Endorsed:) Demurrer to indictment. Filed Aug. 11, 1920. Edwin R. Williams, clerk.

22 In the United States District Court for the Southern District of Florida.

UNITED STATES OF AMERICA
vs.
W. S. BARTLETT ET AL. } 1101.

This cause coming on to be heard upon the demurrer to the indictment, and the same having been argued and submitted,

It is considered that said demurrer be and the same is hereby sustained.

Done this 5th day of February, 1921.

RHYDON M. CALL,
District Judge.

(Endorsed:) Order sustaining demurrer. Filed Feb. 5, 1921. Edwin R. Williams, clerk.

23 In the District Court of the United States, in and for the Southern District of Florida.

THE UNITED STATES OF AMERICA
vs.
LEROY W. WALTER ET AL.

Opinion.

The indictment in this case contains three counts, the first count charges that the defendants combined, conspired, confederated and agreed together to commit an offence against The United States, by making and presenting for approval and payment a fraudulent claim against the U. S. Shipping Board Emergency Fleet Corporation, the entire stock of which was owned by the United States.

It proceeds then to state the fraudulent nature of the claim. This statement may be epitomized as follows: The captain and chief engineer of the "Caribou," a boat owned and operated by the Fleet Corporation, and whose duties required them to act as assistant inspectors of repairs being made upon said vessel, and while the cap-

tain and chief engineer were receiving salaries as captain and chief engineer from the Fleet Corporation, were employed by the other defendants to perform duties for them in making such repairs and carried upon the pay roll to be paid by the Corporation under assumed or fictitious names, thereby causing them to neglect their duties as assistant inspectors of such repairs and thereby deceiving the Corporation.

The second count charges a conspiracy to obtain payment and approval of fraudulent claims against the Corporation, known to them to be fraudulent. The nature and fraudulent character of the claims being the same as set forth in the first count.

24 The third count charges a conspiracy to defraud the United States, the allegations of fraud, etc., being the same as set out in the other counts.

A demurrer was interposed to each of these counts. The case of United States vs. Strang, Thomas & Walter, decided by the Supreme Court on January 3rd, 1921, seems to me to settle the question in so far as the third count is concerned favorably to the defendants, and such demurrer must be sustained to the third count.

It is contended by defendants that the facts stated in the 1st and 2nd counts do not state a case of fraudulent claim against the Corporation. This contention I do not think well taken. The charges in the two counts, as I read them, are that the defendants conspired together to present to and and procure the payment from, the Corporation of the claim for work done for the other defendants in making repairs upon the vessel of which the claimants were, respectively, captain and chief engineer, by using fictitious names on the pay rolls, thereby preventing them from performing their duties as assistant inspectors of such repairs and while under pay by the Corporation as such captain and chief engineer. No man can be faithful to two masters such divergent interests as those of a contractor making repairs on a vessel and the owner. "No man can serve two masters. For either he will hate the one and love the other; or he will sustain the one and despise the other." To say that the secret employment of an employee of the owner to make repairs on the vessel, which repairs are to be paid for by the owner, while the owner has a right to expect such employee to inspect and pass upon such repairs, is a fraud upon such owners, states a correct proposition, which I do not think admits of contradiction.

Therefore I do not think the demurrers to these counts are well taken upon this ground.

25 It is further urged in support of the demurrer that a conspiracy to defraud the Fleet Corporation is not a crime against the United States, that Congress transcended its powers in passing the act of Oct. 23rd, 1918 (Chap. 194, 40 Stats. 1015, Sec. 10199, Compiled Statutes Supplement, 1919, p. 2337.)

The portion of that act bearing upon the question here raised is as follows: "Whoever shall make or cause to be made or present or

cause to be presented for payment or approval to ------ any corporation in which the United States of America is a stockholder any claim upon or against ------ any corporation in which the United States is a stockholder, knowing such claim to be false, fictitious or fraudulent," etc., and

"Whoever shall enter into any agreement, combination, or conspiracy to defraud ------ any corporation in which the United States of America is a stockholder by obtaining ------ the payment or allowance of any false or fraudulent claim."

The question may be stated thus, "has Congress the power under the powers delegated to the General Government by the Constitution to pass a law making it a crime against the United States to present or obtain payment of a claim against every corporation." If this question be answered in the negative the question then arises "does the fact that the United States as a stockholder in a corporation vest in Congress the power to make such presentation or payment of such a claim a crime against the United States."

The Government of the United States is a Government of delegated powers and is supreme within those powers. It is this principle that sustains the legislation concerning national banks and the laws punishing criminally acts forbidden by those laws. But I do not understand that the Congress has the power to declare the perpetuation of a fraud against every corporation, a crime
26 against the United States. The statute in question is not aimed at defrauding corporations organized by Congress pursuant to the powers delegated to the General Government, but says any corporation in which the United States is a stockholder, whether organized by one of the States or a foreign power. I am therefore constrained to answer the first question in the negative.

I now come to the second question, does the fact that the United States is a stockholder vest this power in the Congress.

In the Bank of the United States vs. Planters Bank of Georgia, 9 Wheat at star, page 908, Chief Justice Marshal says: "As a member of a corporation a government never exercises its sovereignty. It acts merely as a corporator and exercises no other power in the management of the affairs of the corporation, than are expressly given by the incorporating act."

If this principle is sound, then the mere fact that the United States is a stockholder in a corporation would not vest in Congress the power to make a fraud upon such corporation a crime against the United States, and yet this is exactly what the statute attempts to do.

I realize that the Fleet Corporation was organized under the laws of the District of Columbia, under authority of the act of Congress, and may for that reason occupy a different status from an ordinary corporation organized under the statutes of one of the States, and I have been troubled by the consideration of the question whether, the statute being general as to any corporation generally, trading, or otherwise, I would have the power to consider the nature of the

corporation alleged to have been defrauded in reaching a con-
27 clusion as to the validity of the statute, but this being a criminal statute is to be strictly construed in protection of the liberty of the citizen, and I am therefore constrained to hold the demurrers to the 1st and 2nd counts must be sustained.

Done this 2nd day of February, 1921.

RHYDON M. CALL, *Judge.*

(Endorsed:) Opinion. Filed Feb. 2, 1921. Edwin R. Williams, clerk.

28 In the United States District Court of the Southern District of Florida.

UNITED STATES OF AMERICA, PLAINTIFF *vs.* W. S. BARTLELL, ALIAS C. WILLIAMS, G. M. CROCKER, alias H. Walker, Leroy W. Walter, James H. Strang, Charles A. Strang and Henry C. Thomas, defendants.	No. 1101.

To the honorable judge of said court:

Comes now the United States of America by H. S. Phillips and W. McL. Christie, United States attorneys for the Southern District of Florida, and respectfully shows that on the 4th day of February, A. D. 1921, the court made an order in said cause sustaining the demurrers of Leroy W. Walter to the indictment in said cause, and

Your petitioner feeling itself aggrieved by the said ruling of the court entered therein as aforesaid herewith petitions the court for an order allowing the United States of America to prosecute a writ of error to the Supreme Court of the United States under the law in such cases made and provided.

The premises considered, your petitioner prays that a writ of error do issue in its behalf to the Supreme Court of the United States sitting at Washington for the correction of the erors complained of and herewith asigned.

H. S. PHILLIPS,
W. McL. CHRISTIE,
United States Attorneys for Petitioner in Error.

(Endorsed:) Petition for order allowing writ of error. Filed Feb. 22, 1921, Edwin R. Williams, clerk.

29 In the United States District Court for the Southern District of Florida.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* W. S. BARTLETT, ALIAS C. WILLIAMS, G. M. Crocker, alias H. Walker, Leroy W. Walter, James H. Strang, Charles A. Strang, and Henry C. Thomas, defendants.	#1101.

Order allowing writ of error.

The foregoing cause coming on this day to be heard upon petition for a writ of error and the assignments of error submitted therewith, it is upon consideration thereof ordered that said petition be granted and that a writ of error be allowed.

Done and ordered this 21st day of February, A. D. 1921.

RHYDON M. CALL,
United States District Judge.

(Endorsed:) Order allowing writ of error. Filed Feb. 22, 1921. Edwin R. Williams, clerk.

30 In the United States District Court for the Southern District of Florida.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* W. S. BARTLETT, ALIAS C. WILLIAMS, G. M. CROCKER, ALIAS H. WALKER, LEROY W. WALTER, JAMES H. STRANG, CHARLES A. STRANG, and HENRY C. THOMAS, defendants.	#1101.

Assignment of errors.

Comes now the United States of America, plaintiff in said cause, by H. S. Phillips and W. McL. Christie, United States attorneys for the Southern District of Florida, and in connection with the plaintiff's petition for a writ of error in this cause assigns the following errors upon which plaintiff in error relys to recover the judgment of the court herein as appear of record, to wit:

1.

The court erred in sustaining the demurrer of the said Leroy W. Walter to the indictment in said cause.

2.

The court erred in sustaining the demurrer to the first count of the indictment in said cause.

3.

The court erred in sustaining the demurrer to the second count of the indictment in said cause.

4.

The court erred in sustaining the demurrer to the third count of the indictment in said cause.

5.

The court erred in holding that the act of October 23rd, 1918 (chapter 194, 40 Stats. 1015), is unconstitutional.

31 Wherefore, the United States as plaintiff in error prays that the judgment of said court be reversed.

H. S. PHILLIPS,
W. McL. CHRISTIE,
United States Attorneys for the Southern District of Florida for Plaintiff in Error.

(Endorsed:) Assignment of errors. Filed Feb. 22, 1921. Edwin R. Williams, clerk.

32 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judge of the District Court of the United States for the Southern District of Florida, greeting:

Because of the record and proceedings, and also in the rendition of the decision sustaining a demurrer to an indictment which is in said district court before you, between the United States of America and Leroy W. Walter, a manifest error has happened to the great damage of the said United States of America as by its complaint appears. We, being willing that the error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, that under your hand and seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington on the 15th day of April, A. D. 1921, in the Supreme Court then and there to be held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the 16th day of March, in the year of our Lord one thousand nine hundred and twenty-one.

[SEAL.] EDWIN R. WILLIAMS,
Clerk of the District Court of the United States for the Southern District of Florida.

Endorsed: Writ of error.

33 UNITED STATES OF AMERICA, *ss:*

To Leroy W. Walter, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, on the 15th day of April, 1921, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Southern District of Florida, wherein the United States of America is plaintiff in error and you are defendant in error, to show cause, if any there by, why the decision and order of the District Court of the United States for the Southern District of Florida sustaining the demurrer to the indictment, as in said writ of error mentioned, should not be reversed and corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Rhydon M. Call, judge of the United States District Court for the Southern District of Florida, this 16th day of March, in the year of our Lord one thousand nine hundred and twenty-one.

[SEAL.] EDWIN R. WILLIAMS,
Clerk of the United States District Court for the Southern District of Florida.

Service of the within and foregoing citation accepted this 16th day of March, 1921.

JNO. W. DODGE,
Solicitor for the Defendant in Error.

34 In the United States District Court for the Southern District of Florida.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* W. S. BARTLETT, ALIAS C. WILLIAMS, G. M. Crocker, alias H. Walker, Leroy W. Walter, James H. Strang, Charles A. Strang, and Henry C. Thomas, defendants.	#1101.

To the honorable clerk of said court:

In preparing a transcript of record in said cause you will please include the following:

1. The indictment filed July 26, 1920.
2. The demurrer to indictment filed August 11, 1920.

3. The order of court sustaining the demurrer to the indictment filed February 5, 1921.
4. The opinion of the court on the sustaining of the demurrer to the indictment filed February 2, 1921.
5. The petition for writ of error.
6. The order allowing writ of error.
7. Assignments of error.
8. Writ of error.
9. Acknowledgment of receipt of copy of assignments of error and these directions by the attorney for defendants in error.
10. The citation showing acceptance of service of same.
11. These directions.

H. S. PHILLIPS,
W. McL. CHRISTIE,
Attorneys for Plaintiff.

35 I hereby acknowledge receipt of copy of the foregoing directions to clerk together with copy of assignments of error. This 23 day of February, A. D. 1921.

JNO. W. DODGE,
Attorney for Defendant Leroy W. Walter.

(Endorsed:) Directions for making up transcript. Filed February 24, 1921. Edwin R. Williams, clerk.

36 United States District Court, Southern District of Florida.

UNITED STATES OF AMERICA:
Southern District of Florida.

I, Edwin R. Williams, clerk of the United States District Court in and for the Southern District of Florida, and as such the legal custodian of the records and files of said court, do hereby certify the foregoing typewritten pages and part pages numbered from one to 35, both inclusive, constitute a true and correct copy of the original record and proceedings including the assignment of errors in a cause lately pending in this court wherein the United States of America is plaintiff and Leroy W. Walter is defendant, as prepared by directions filed in said cause.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Jacksonville, in said district this 21st day of March, A. D. 1921.

EDWIN R. WILLIAMS,
Clerk, U. S. District Court.

(Endorsed on cover:) File No. 28600. S. Florida, D. C. U. S. Term No. 223. The United States of America, plaintiff in error, vs. Leroy W. Walter. Filed December 10th, 1921. File No. 28600.

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In the Supreme Court of the United States.

OCTOBER TERM, 1923.

UNITED STATES, PLAINTIFF IN ERROR,
v.
LEROY W. WALTER. } No. 20.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

The indictment.

An indictment charged the defendant in error, Leroy W. Walter, with a conspiracy to commit an offense against the United States. The indictment was in three counts. The first, after averring that "the United States Shipping Board Emergency Fleet Corporation was a corporation organized and existing under the laws of the District of Columbia" and that the United States was a stockholder "in said corporation" and as such "the sole owner of such corporation," charged that the said Leroy W. Walter and others named in the indictment conspired to "commit an offense against the United States," to

wit, "to make and caused to be made and to present and cause to be presented for approval and payment to the proper officer or employee of said United States Shipping Board Emergency Fleet Corporation a certain claim upon and against said United States Shipping Board Emergency Fleet Corporation, which said claim was then and there to be fraudulent in this respect."

Then followed a detailed statement of the nature of the fraud, together with the specification of six overt acts in pursuance of said conspiracy.

The second count, after making similar averments with respect to the nature of the Emergency Fleet Corporation and the interest of the United States as its "sole owner," charged a similar conspiracy "to obtain the payment and approval of certain fraudulent claims * * * against said United States Shipping Board Emergency Fleet Corporation." Then followed similar detailed statements of the nature of the fraud with the specification of six overt acts.

The third count, after similar preliminary averments as to the nature of the Emergency Fleet Corporation, charged the defendant Walter and others with a conspiracy "to defraud the United States of America," followed by a similar statement of the nature of the fraud and a specification of six overt acts.

Sections of Criminal Code involved.

The first two counts are based upon section 35 of the Criminal Code, which as amended by act of October 23, 1918 (40 Stat. 1015), is as follows:

> Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or d position, knowing the same to contain any fraudulent or fictitious statement of entry; or whoever shall take and carry away or take for his own use, or for the use of another, with intent

to steal or purloin, any personal property of the United States, or any branch or department thereof, or any corporation in which the United States of America is a stockholder; or whoever shall enter into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim; and whoever, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, or willfully to conceal such money or other property, shall deliver or cause to be delivered to any person having authority to receive the same any amount of such money or other property less than that for which he received a certificate or took a receipt; or whoever, being authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, shall make or deliver the same to any other person without a full knowledge of the truth of the facts stated therein and with intent to defraud the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

> And whoever shall purchase, or receive in pledge, from any person any arms, equipment, ammunition, clothing, military stores, or other property furnished by the United States, under a clothing allowance or otherwise, to any soldier, sailor, officer, cadet, or midshipman in the military or naval service of the United States or of the National Guard or Naval Militia, or to any person accompanying, serving, or retained with the land or naval forces and subject to military or naval law, having knowledge or reason to believe that the property has been taken from the possession of the United States or furnished by the United States under such allowance, shall be fined not more than $500 or imprisoned not more than two years, or both.

The third count is based upon section 37 of said code, which reads as follows:

> SEC. 37. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars or imprisoned not more than two years, or both.

Decision of court below.

It is not necessary to recite at length the detailed statement of the nature of the fraud nor to argue, as was arg d in the court below, whether the counts in the inc ment aptly charge a fraud. Under the

Criminal Appeals Act the construction placed by the trial court on the indictment will be accepted on this writ of error by the Supreme Court, and therefore the only question now open is whether upon such construction any indictable offense has been charged. (*United States* v. *Patten*, 226 U. S. 525; *United States* v. *Colgate & Co.*, 250 U. S. 300, 306.)

I quote that portion of the opinion of the District Court which held that the indictment did charge a fraud within the letter of the statute (R. 16):

> It is contended by defendants that the facts stated in the first and second counts do not state a case of fraudulent claim against the corporation. This contention I do not think well taken. The charges in the two counts, as I read them, are that the defendants conspired together to present to and procure the payment from, the corporation of the claim for work done for the other defendants in making repairs upon the vessel of which the claimants were respectively captain and chief engineer, by using fictitious names on the pay rolls, thereby preventing them from performing their duties as assistant inspectors of such repairs and while under pay by the corporation as such captain and chief engineer. No man can be faithful to two masters [with] such divergent interests as those of a contractor making repairs on a vessel and the owner. "No man can serve two masters. For either he will hate the one and love the other; or he will sustain

> the one and despise the other." To say that the secret employment of an employee of the owner to make repairs on the vessel, which repairs are to be paid for by the owner, while the owner has a right to expect such employee to inspect and pass upon such repairs, is a fraud upon such owners, states a correct proposition, which I do not think admits of contradiction.
>
> Therefore I do not think the demurrers to these counts are well taken upon this ground.

The demurrers to these counts were sustained upon the ground that Congress had exceeded its constitutional powers in declaring generally that the defrauding of *any* corporation in which the United States was a stockholder should be a criminal offense.

The court conceded that where corporations are organized by Congress pursuant to the powers delegated to the Federal Government, Congress may enact legislation concerning them and punish acts forbidden by such laws, and it also conceded, arguendo, that the Emergency Fleet Corporation, because organized under the laws of the District of Columbia under authority of an Act of Congress, might be similarly protected. But it decided that the terms of the Criminal Code are broad enough to extend beyond such corporations and include the defrauding of even trading corporations organized under the laws of a State or a foreign country, if the United States is a stockholder therein, and that so interpreted the provision extends beyond the powers of Congress.

Prior decisions on this statute.

It may be noted preliminarily that this court in a case decided since the court below dismissed this indictment has enforced the statute in question under similar circumstances without any doubt or question as to the power of Congress to pass the statute. I refer to the case of *United States* v. *Bowman*, 260 U. S. 94, in which the defendants were charged with a similar conspiracy against the Emergency Fleet Corporation under the same statute. In that case, as in the instant case, it was averred that the United States owned all the stock in the United States Shipping Board Emergency Fleet Corporation, and that the defendants sought to defraud said Fleet Corporation by obtaining allowance of a fraudulent claim upon false vouchers. The court below did not question the power of Congress to pass the statute, but held that it was not applicable to a conspiracy which had been formed and carried out upon the high seas, and therefore dismissed the indictment. This court reversed this judgment and held that the statute was applicable and that the defendants should be tried.

Apparently the question of constitutional power to pass the statute was not raised in that case either in the lower court or in this court, and therefore it can not be regarded as a direct and controlling ruling in the present case. But the fact that in the Bowman case neither this court nor the lower court ever questioned the validity of the statute in question is not without some significance.

I.

THE FIRST AND SECOND COUNTS.

The ultimate question in this case is whether the United States has the right to protect its property from spoliation by punitive statutes.

Thus stated, does the question admit of doubt?

The court below considered the validity of the statute in its application to possible and conjectural stock holdings of the Government and not to the concrete cases involved in this indictment. It did not question the right of Congress, where it created a corporation for some Federal end and owned its stock, in whole or in part, to protect, by a punitive statute, such property rights; but it quite unnecessarily considered the validity of the statute as applied to the possible Government's ownership of stock where its acquisition was not for some specific Federal purpose.

Is it not time enough to consider such a case when it arises? And, if it is conceivable that such a case could arise, the court might then hold, in order to maintain the validity of the statute, that it did not apply to such a case.

Wherever possible, a statute should be so construed that it may be held constitutional. (*United States* v. *Delaware & Hudson Co.*, 213 U. S. 366, 407; *The Abby Dodge*, 223 U. S. 166, 175; *Lewis Publishing Co.* v. *Morgan*, 229 U. S. 288, 311; *Union Pacific R. Co.* v. *Laramie Stock Yards Co.*, 231 U. S. 190, 200; *Plymouth Coal Co.* v. *Pennsylvania*, 232 U. S. 531,

546; *United States* v. *Standard Brewery*, 251 U. S. 210, 220; *Missouri Pacific R. Co.* v. *Ault*, 256 U. S. 554, 559; *Texas* v. *Eastern Texas R. Co.*, 258 U. S. 204, 217; *Bratton* v. *Chandler*, 260 U. S. 110, 114.) "Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt." (*Sinking Fund Cases*, 99 U. S. 700, 718.) May, then, this court assume, for the purpose of declaring this legislation invalid, that Congress enacted it in contemplation of investments, not yet made, which, it is claimed, could not be constitutionally protected by this legislation?

When the United States, through its executive department, invests money in the stock of a corporation, how can it be said that such investment is not made under a delegated power and for a Federal purpose? The Government has an almost unlimited right to raise money by taxation, and through its operations it becomes possessed of large sums of money which are not raised by taxation at all. These powers necessarily include the right to appropriate—and, incidentally, to invest—the public revenues in corporate securities. The Constitution has placed no limit upon this power of appropriation. (See *Frothingham* v. *Mellon* and *Massachusetts* v. *Mellon*, both decided at the last term of this court.)

If the United States has, as has not infrequently happened in its history, large surplus funds in its Treasury, and Congress authorizes the Secretary of the Treasury to invest these public funds, until

needed, in railroad securities, could the power of the Federal Government to make such investments be questioned? Even if it could be questioned, if the executive department of the Government, under authority of Congress, invested the public revenues in corporate securities, such securities would be the *de facto* property of the United States, and, while owned by it, the United States, even if the investments had been unauthorized, would have the right to protect its property by civil remedies or by punitive statutes. The question whether it had the right to retain such investments is beside the present question.

Nor can it matter that the property interests of the Government are those of a stockholder. It is true that a stockholder has only an undivided interest in his corporation and that his property rights are qualified by the law of the corporation. They are nevertheless property rights, and the United States would have the same right to protect such property interests from spoliation as its more direct interest in the bullion in the Treasury. The form of the property seems unimportant.

It may be an abuse of legislative discretion to punish a fraud upon a corporation partly owned by the Government where the purposes of the corporation have little relation to the Federal Government and the interests of the United States as a stockholder are small and unimportant, but the right of the Government to protect its interests as a stockholder where its property rights are great is no clearer than where its property interest is small.

The amount of the property interest concerns policy, not power.

However, in this case it is not necessary to discuss this nice question, which, as it seems to us, the lower court quite unnecessarily discussed.

In this case the Government created this corporation in pursuance of its war powers. It owned all its stock. It was its sole owner. As a corporation is, in a sense, a legal fiction, the Government was the owner of the property of the Emergency Fleet Corporation. The latter was a governmental instrumentality; and while, for certain purposes, the distinction between the corporation and the Government, as its sole stockholder, may be recognized, yet, in punishing a fraud upon a Federal instrumentality, the distinction is unimportant, and the question still remains: May the Government protect its property rights from fraud? So far as I know, this has never hitherto been doubted.

The United States, as incidental to any of its constitutional powers, may create and employ a corporation to carry out such powers. (*McCulloch* v. *Maryland*, 4 Wheat. 316; *Van Allen* v. *The Assessors*, 3 Wall. 573, 583; *California* v. *Pacific R. R. Co.*, 127 U. S. 1, 39, 40; *Luxton* v. *North River Bridge Co.*, 153 U. S. 525, 529; *The Lake Monroe*, 250 U. S. 246.)

It follows certainly, on the principle that the greater includes the less, that the United States has the same incidental power to subscribe to the stock of such a corporation. In *Chesapeake & Delaware Canal Company* v. *United States*, 250 U. S. 123, 126,

the power of the United States to own stock in the canal company was evidently not considered doubtful by anybody. In *Wilson* v. *Shaw*, 204 U. S. 24, 33, *et seq.*, the power of the United States to acquire and hold stock in the Panama Railroad Company was assumed. Could not the United States punish a fraud on the Panama Canal Company?

Of course a corporation does not acquire sovereign rights merely because a government becomes a stockholder therein. This was held in *Bank of the United States* v. *Planters' Bank of Georgia*, 9 Wheat. 908, cited by the court below, and that is all for which that case stands. A similar position was taken in *Sloan Shipyards Corporation* v. *Emergency Fleet Corporation*, 258 U. S. 549. See also *South Carolina* v. *United States*, 199 U. S. 437. But if a government may legislate concerning the affairs of a corporation, the fact that the government is a stockholder does not deprive that government of its power to protect the corporation against fraud.

Assuming that the ownership of corporate stock must have some reasonable connection, as means to an end, with the exercise of some constitutional power, and, that this qualification must be taken as necessarily implied in section 35 of the Criminal Code, such connection must be assumed by the Judiciary, for presumably Congress formed the Fleet Corporation and subscribed to all its stock to carry out its delegated powers. The presumption would be that if Congress authorizes the purchase by the United States of stock in a cor-

poration, it does so because such purchase is a reasonable method of exercising some constitutional power, and this presumption seems sufficient, until some actual case is presented where the purchase and holding of corporate stock by the United States for some other purpose is clearly shown.

The principles which must govern the question whether—assuming the stock to have been acquired and held as a means of exercising some delegated power—Congress may constitutionally make it a Federal offense to defraud the corporation are illustrated and laid down in the cases of *United States* v. *Fox*, 95 U. S. 670, and *United States* v. *Hall*, 98 U. S. 343. In the former case section 5132, R. S., which made it a Federal offense for anyone within three months before commencement of bankruptcy proceedings to obtain goods on credit with intent to defraud, was held unconstitutional as having no connection with Federal powers. The court said (95 U. S. 672):

> Any act committed with a view of evading the legislation of Congress passed in the execution of any of its powers, or of fraudulently securing the benefit of such legislation, may properly be made an offense against the United States. But an act committed within a State, whether for a good or a bad purpose, or whether with an honest or a criminal intent, can not be made an offense against the United States, unless it have some relation to the execution of a power of Congress, or to some matter within the jurisdiction of the United States.

> An act not having any such relation is one in respect to which the State can alone legislate.
>
> The act described in the ninth subdivision of section 5132 of the Revised Statutes is one which concerns only the State in which it is committed; it does not concern the United States. It is quite possible that the framers of the statute intended it to apply only to acts committed in contemplation of bankruptcy; but it does not say so, and we can not supply qualifications which the legislature has failed to express.

It will be observed that, if it had been made a condition that the act of obtaining goods on credit with intent to defraud be done in contemplation of bankruptcy, the act, in the opinion of the court, would have been constitutional.

In *United States* v. *Hall* the defendant was indicted for violation of section 4783, R. S., which made embezzlement by a guardian of his ward's pension money a Federal offense. It was claimed that, after the money was paid over to the guardian, his criminal liability in respect to it was a matter for the State whose officer he was. The act, however, was held constitutional as being a reasonable method of protecting the exercise of the constitutional power of the United States to grant pensions to its soldiers, etc.[1]

[1] See also *United States* v. *Van Leunen*, 62 Fed. 52, 56, as to the constitutionality of the act punishing a person taking excessive fees in pension matters where one of the grounds assigned for holding the act constitutional was that it protected the United States against false claims, and the approval

I submit that the present case falls within the ruling in *United States* v. *Hall*.

When the United States acquires, for Federal ends, stock in a corporation, it is true that its rights as against the corporation are governed by the law of corporations, that theoretically there is no identity between it and the corporation, and that the agents of the corporation are not the agents of the United States within certain statutes of the United States. Nevertheless it has frequently been held by this court that, for some purposes, the law may look through the corporate entity and consider the stockholders as partners or joint adventurers. The court did this as recently as last term, when it decided in the case of *United States Grain Corporation* v. *Phillips*, 261 U. S. —., that the property of the corporation was in substance "the property of the United States. It is true that the legal title was in the Corporation, that the property of the Corporation might have been taken to pay a judgment against it, and that in other ways the difference of personality would be recognized. But for purposes like the present imponderables have weight."

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of this statement in *Calhoun* v. *Massie*, 253 U. S. 170, 173–175, where the court said:

"The constitutionality of such legislation, although resembling in its nature the exercise of the police power, has long been settled."

On the constitutionality of Federal legislation making it a crime to receive more than a certain fee in pension matters, see also *Frisbie* v. *United States*, 157 U. S. 160, 166.

See also *United States* v. *McCready*, 11 Fed. 225, 235–237, where the constitutionality of section 3892, R. S., making it a Federal offense to pry into or convert mail before it has reached the addressee, was sustained.

If the corporate entity may be looked through for any purpose, it would seem that it could be looked through to sustain the constitutionality of acts of Congress. In effect, the United States, by acquiring the stock, makes itself a partner in the venture as a means to the accomplishment of a public end, and hence interested directly in the success of the enterprise. In this status or position of partner it does not and can not divest itself of its sovereign character, and it is as sovereign, as well as stockholder, that it is interested in the financial prosperity of the corporation and the protection of its property rights. Having this interest, it can not be said to be an unreasonable means to the carrying out of the public end and the preservation of its stockholding interest that it should protect the property of the corporation by making it a Federal offense to defraud it. The matter is briefly summed up by Justice Swayne in *Farmers' Bank* v. *Dearing*, 91 U. S. 29, 34, where, speaking of the analogous subject of national banks, he said:

> The power to create carries with it the power to preserve. The latter is a corollary from the former.

The case of the national banks presents an analogy. Section 5209, R. S., punishes frauds of various kinds upon such banks, and no doubt longer remains of the constitutionality of the act. Indeed, in *Easton* v. *Iowa*, 188 U. S. 220, 229–232, it was held that a statute of the State of Iowa punishing officers of national banks who received deposits after the bank was insolvent, was beyond the powers of the State to enact, since the criminal legislation of Con-

gress was exclusive. It may plausibly be said that Section 5209, R. S., deals solely with a special class of corporation forming part of a system created by Congress under its power to coin money, etc. It must be remembered, however, that the interest of the United States in the financial success of the banks was only indirect, since it was not liable on the notes, or for the deposits, while such interest, where the United States actually subscribes to the stock of a corporation, is exceedingly direct.

Another analogy is the case of the Pacific Railroads. In *Wardell* v. *Railroad Company*, 103 U. S. 651, 659, certain directors of the Railroad Company formed a coal company for the purpose of entering into profitable contracts with the Railroad Company. In holding such contract void, the court said:

> The scheme disclosed here has no feature which relieves it of its fraudulent character, and the contract of July 16, 1868, which was an essential part of it, must go down with it. It was a fraudulent proceeding on the part of the directors and contractors who devised and carried it into execution, not only against the company, *but also against the Government, which had largely contributed to its aid by the loan of bonds and by the grant of lands. By the very terms of the charter of the company five per cent of its net earnings were to be paid to the Government. Those earnings were necessarily reduced by every transaction which took from the company its legitimate profits.* (Italics mine.)

If the contracts were a fraud on the United States, though it was merely a secured creditor, *a fortiori*,

they would have been a fraud on the United States if the latter had been a stockholder; and, if they were a fraud on the United States at common law or in equity, Congress could make such a fraud a Federal offense or crime.

THE THIRD COUNT.

The third count is drawn under a different statute, viz., section 37 of the Criminal Code, which makes it a crime to conspire to defraud the United States in any manner or for any purpose.

The District Court held that the insufficiency of this count was settled by the decision of the Supreme Court in *United States* v. *Strang*. That case merely held that an agent of the Emergency Fleet Corporation was not an agent of the United States within the meaning of section 41, Criminal Code. But the phrase "to defraud the United States" has, by the decisions of the Supreme Court, a very broad meaning. It covers any "impairing, obstructing, or defeating the lawful function of any department of the Government" by corrupt means (*Haas* v. *Henkel*, 216 U. S. 462, 479, 480; *United States* v. *Barnow*, 239 U. S. 74, 78–80). All that is necessary, therefore, is contact with one of the departments of the Government (as to "departments" see *United States* v. *Plyler*, 222 U. S. 15), whether through the agents of a corporation or through the agents of the United States is immaterial. That to interfere with the Emergency Fleet Corporation would be, ultimately, to interfere with one of the "departments" of the Government, seems fairly established by *The Lake Monroe* Case. We need only imagine a conspiracy to break down all

the machinery of the Emergency Fleet Corporation to see that this must be so, since such action, if effective, would have resulted inevitably in the impairment of the war operations of the War and Navy Departments, and of the carriage by sea of interstate and foreign commerce. Such a conspiracy would certainly touch the government of the United States as nearly as the conspiracy dealt with in *In re Debs*, 158 U. S. 564.

The decision of the District Court is directly contrary to the decision of the Court of Appeals for the Fourth Circuit in *Belvin* v. *United States*, 260 Fed. 455. There it was held that a conspiracy to have one of the defendants placed in a false capacity on the pay roll of a contractor with the United States, where the United States paid the cost of the contract plus a commission to the contractor, was a conspiracy to defraud the United States. It is true that, in that case, the indictment alleged that the defendants knew that the United States was paying the costs of the contract, and that no similar allegation is contained in the indictment in the present case. But the District Court in the present case did not base its decision on any lack of essential allegations in the indictment, and, therefore, the failure to allege knowledge is not material now, even if the defendants, some of whom were employees of the Emergency Fleet Corporation, must not be presumed to have known that all the funds of the corporation came from the Treasury of the United States.

Respectfully submitted.

JAMES M. BECK,
Solicitor General.

AUGUST, 1923.

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In the Supreme Court of the United States

OCTOBER TERM, 1923

UNITED STATES, *Plaintiff in Error,*
vs.
LEROY W. WALTER, *et al.*
No. 20.

In Error to the District Court of the United States for the Southern District of Florida.

BRIEF FOR LEROY W. WALTER.

REPLY TO GOVERNMENT BRIEF.

The indictment, demurrer and opinion of Court below all show that the Act of Congress using the words "*any* corporation" made the Act too broad. The courts can not restrict the word "any," nor can an indictment be framed on a restricted use of the word "any," and thus charge a crime. The ultimate question is not "whether the United States has the right to protect its property from spoliation by punitive statutes." (See page 9, brief of U. S.) This statute is an attempt to create a crime based upon the mere fact that the United States is a stockholder in a corporation. If such is sufficient then Congress may create a crime based on the mere fact that the United States is a creditor of a creditor, a creditor being entitled to even a greater security of property for his debt than a stockholder.

The case of U. S. vs. Bowman 260 U. S. 94 did not have

raised in it, nor argued, nor decided in any way the validity of this Act, and this court did not have called to its attention the decision of the judge of the Southern District of Florida, altho this case has been on the docket about two years.

The case of U. S. vs. Strang, and the briefs filed in that case, will throw light upon this case. There it was held by this court that the United States Shipping Board Emergency Fleet Corporation was not and is not the United States, but a distinct separate legal entity. Its property was its own property and not the property of the United States because the United States was a stockholder or creditor or donator of its capital.

The Act of Congress attempts to create a crime regardless of whether the corporation is its agent or instrumentality in executing some power under the Constitution. The fallacy of the Government's argument is clearly shown by its own brief (see page 11, last paragraph, and page 12, first paragraph, of its brief). There counsel admits "It may be an abuse of legislative discretion to punish a fraud upon a corporation partly owned by the Government where the purposes of the corporation have little relation to the Federal Government" etc. A matter of degree—a matter of policy not power. This Act nowhere limits itself to a corporation owned solely and wholly by the United States *and* it does not make any distinction as to whether it is a corporation with little or great relation to the United States, or whether doing or executing business *for* the United States. The Act says "*any* corporation." As this court said in U. S. vs. Hall 98 U. S. 343, "we can not supply qualifications which the legislature has failed to express." (See pages 14 and 15 Government brief.)

OUR CONTENTIONS

Congress exceeded its authority in unrestrictedly using the words "any corporation." The courts can not limit the word "*any*," nor qualify it, nor add the purposes or powers of Congress or the Constitution to the word "any," and thereby create a crime not defined.

The Government of the United States is one of enumerated and delegated powers and there are no common law offenses against the United States.

United States vs. Britton 108 U. S. 199 (27 L. Ed. 698).

The Act as amended went beyond the original statute which provided that there must be an intent "to defraud the United States" which was an essential element of the offense. The amended Act provides that if there was an intent to defraud the corporation in which the United States was a stockholder that this would constitute a criminal offense against the United States.

If Congress can go to the extent of providing that it is a criminal offense against the laws of the United States to defraud a corporation in which it is a stockholder, then it can provide that in any corporation in which the United States has one director or one officer or sells goods or collects taxes from it or in any way has anything to do with the corporation, then to defraud such a corporation would be a crime against the United States. If it can provide that a stockholding interest in a corporation gives the United States the right to punish crimes against the corporation, then it could likewise provide that if the United States was interested with any private citizen as a partnership, firm, association or otherwise, that in defrauding such partnership, firm, or association would be a crime against the United States, and this regardless of whether the United States was acting under some power provided for in the Constitution or in the execution of some power or in relation to some matter provided for in the Constitution as to which Congress might have jurisdiction. As stated above, the Act under consideration does not limit the corporation which might be defrauded to being a corporation which was carrying out or executing some powers given to Congress under the Constitution or was engaged in matters over which Congress had jurisdiction. The Act applies generally to any and all corporations regardless of their nature or business or purpose whether Congress has jurisdiction over the same or otherwise.

As stated in the case of Salas vs. United States 234 Fed. 842, the Circuit Court of Appeals of New York held that the United States abandons its sovereign capacity by becoming a stockholder in a corporation and entering through that corporation into commercial transactions although the United States owns all of the stock, and the offense of conspiring to defraud the corporation can not be under the law an offense of conspiring to defraud the United States. In other words, the minute the United States becomes a stockholder it occupies the position that all stockholders occupy and any conspiracy to defraud is not one against the stockholder but is one against the corporation. Surely Congress has no power to legislate to the extent of providing a crime because parties might conspire to defraud a corporation and thereby, directly or indirectly or remotely, the United States might as a stockholder suffer some injury particularly if the corporation is organized not by the United States but organized by another State.

In the case of United States vs. Harris 106 U. S. page 629 (27 L. Ed. page 290), the Supreme Court in that case said, "It must nevertheless be stated that the Government of the United States is one of delegated, limited and enumerated powers; therefore, every valid Act of Congress must find in the Constitution some warrant for its passage. It is apparent by reference to the following provisions of the Constitution: Section 1 of the First Article declares that all legislative powers granted by the Constitution shall be vested in the Congress of the United States, Section 8 of the same Article enumerates the powers granted to the Congress and concludes the enumeration with a grant of power 'to make all laws which shall be necessary and proper to carry into execution the foregoing powers and all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof'; Article 10 of the Amendments to the Constitution declares that the powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively or to the people."

In the above case the Supreme Court quoted from Mr.

Justice Story in his commentaries on the Constitution, as follows: "Whenever, therefore, a question arises concerning the constitutionality of a particular power the first question is whether the power be expressed in the Constitution. If it be, the question is decided. If it be not expressed, the next inquiry must be, whether it is properly an incident to an expressed power and necessary to its execution. If it be, then it may be exercised by Congress. If not, Congress can not exercise it."

We ask that the court consider the above case and read the same in full as it throws much light upon the principles involved in this case.

The statute under consideration was one passed by Congress making it an offense for two or more persons to conspire or go in disguise upon the highway or on the premises of another for the purpose of depriving either directly or indirectly any person or class of persons of the equal protection of the laws or of equal privileges or immunities under the laws. The Legislation was sought to be upheld under Section 2 of Article 4 of the Constitution and the 13, 14 and 15th amendments. The court said, "If therefore we hold that Section 5519 is warranted by the 13th amendment, we should by virtue of that amendment accord to Congress the power to punish every crime by which the right of any person to life, property or reputation is invaded; thus under a provision of the Constitution which simply abolished slavery and involuntary servitude we should with few exceptions invest Congress over the whole catalog of crimes. A construction of the amendment which leads to such a result is clearly unsound."

The court further said "It was never supposed that the Section under consideration conferred on Congress the power to enact a law which would punish a private citizen for an invasion of the rights of his fellow citizens conferred by the State of which they were both residents on all its citizens alike."

If the present amended Act in regard to fraud is upheld I have been unable to see under what particular power under the Constitution an execution of which power by Congress

was being sought by this amendment. The amended act makes it a crime to conspire to commit a fraud against any corporation whether the corporation is organized or created by Congress or otherwise.

The Government of the United States can claim no powers which are not granted to it by the Constitution, and the powers actually granted must be such as are expressly given or given by necessary implication.

Martin vs. Hunter 1 Wheat. 326.

The Government of the United States is one of delegated powers alone; its authority is defined and limited by the Constitution; all powers not granted to it by that instrument are reserved to the States or the people; all rights that can not be granted or secured by the Government of the United States under the constitution are left under the protection of the States.

United States vs. Cruikshank 92 U. S. 551.

Certain specified powers enumerated in the Constitution have been conferred upon the United States Government; and neither the legislative, executive nor judicial department of the Government can lawfully exercise any authority beyond the limits marked out by the Constitution.

Dredscott vs. Sandford 19 How. 401.

The powers of Congress are limited to such matters as are expressly or by implication granted to it by the National Constitution, that being an enabling instrument, while the Constitutions of the States are limitations upon the power of the legislatures of the respective States.

All the legislative power granted by the Constitution belongs to Congress; but it has no legislative power which is not thus granted.

Hepburn vs. Griswold 8 Wall. 611.

The powers not delegated to the United States are reserved to the States respectively or to the people.

Collector vs. Day 11 Wall. 124.

It is hardly necessary to cite any additional authorities on the question of what authority Congress has to enact legislation and the extent to which such legislation may go. The above cases show that Congress has derived all of its powers from the Constitution of the United States and that if the power is not provided for either expressly or impliedly by the Constitution, Congress can not pass legislation outside of the powers granted to the United States under the Constitution.

The only other principle therefore which is necessary to be considered and which might be alleged by the Government is the following:

LIMITED DISCRETION IN CONGRESS AS TO MEANS TO BE EMPLOYED.

"While the National Government is one of the enumerated powers, the Constitution does not attempt to set forth all the *means* by which such powers may be carried into execution. It leaves to Congress a large discretion as to the means that may be employed in executing a given power."

Lottery Cases 188 U. S. 354.

Justice Holland in the above case (47 L. Ed. page 500-501) said, "While our Government must be acknowledged by all to be one of the enumerated powers (McCullough vs. Ind. 4 Wheat 316), the Constitution does not attempt to set forth all the means by which all such powers may be carried into execution; it leaves to Congress a large discretion as to the means that may be employed in executing a given power. The sound construction of the Constitution, this court has said, must allow to the National Legislature that

discretion with respect to the means by which powers it confers are to be carried into execution, which will enable that Body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are not prohibited, but concedes that the latter and spirit of the Constitution, are constitutional."

In the Lottery Cases the court held that the means employed for enforcing "the powers to regulate commerce" by prohibiting the transaction of lottery tickets was within the power of Congress, but the court also said in that case, "The power of Congress to regulate commerce among the states, although plenary, can not be deemed arbitrary, since it is subject to such limitations, or restrictions as are prescribed by the Constitution. This power therefore may not be exercised so as to infringe the rights secured or protected by that instrument. It would not be difficult to imagine legislation that would be justly liable to such an objection as that stated, and be hostile to the parties for the accomplishment of which Congress was vested with the general power to regulate commerce among the several States.—— There is probably no governmental power that may not be exerted to the injury of the public. If what is done by Congress is manifestly in excess of the powers granted to it, then upon the courts will rest the duty of adjudging that its action is neither legal nor binding upon the people. But if what Congress does is within the limits of its power and is simply unwise or injurious, the remedy is that suggested by Chief Justice Marshall in Gibbons vs. Ogden."

I believe the above case probably sets forth as fully as any previous or subsequent cases the law as to how far Congress may go in the use of means to enforce the powers given to Congress. The question in this case then gets down to the proposition as to whether or not Congress under its power to prevent a fraud against the Government of the United States can go to the extent, as a means of preventing such fraud, of enacting legislation which is objected to, namely, providing that if the Government is a stockholder in a corporation and a party attempts or commits a fraud

with intent to defraud such corporation that said party is guilty of a crime.

Our contention is that under the wording of the amendment providing for a crime against the United States in the above instance, that the means of preventing such a crime is arbitrary, unreasonable and beyond the scope and power of Congress because the amendment does not limit this and the means of protecting the United States against fraud but goes far beyond that purpose and scope. In order to show that the means employed in this case are as stated, I call the Court's attention to the following matters:

1. The Act makes it a crime against "whoever shall make or cause to be made or present or cause to be presented for payment or approval to or by —— any corporation in which the United States of America is a stockholder ——any claim upon or against——any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious or fraudulent; or whoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the intent of cheating and swindling or defrauding—— any corporation in which the United States of America is a stockholder, etc.; or whoever shall enter into any agreement, combination or conspiracy to defraud——any corporation in which the United States of America is a stockholder, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim."

2. The Act applies to anybody who attempts to defraud not only the Government of the United States or any department or officer thereof but also applies to any person who attempts to defraud *any* corporation in which the United States of America is a stockholder and that regardless of whether or not the United States of America itself is defrauded. In other words, the means go to the extent of providing a crime for defrauding not the Government but defrauding any corporation whether the Government is thereby defrauded or not.

3. The statute further provides that if a party has an intent to defraud not the United States but an intent to

defraud a corporation in which the United States may be a stockholder, that the party is then guilty of a crime. While it may be admitted that Congress undoubtedly has the power to prevent frauds against the Government, it has no power to prevent frauds against a corporation any more than as against an individual and it might equally have power, according to the language of this amendment, to prevent any and all kinds of frauds not only as to corporations but as to individuals and would practically, by this arbitrary and excessive means, attempted to be used by the wording of this amendment, prescribe the whole catalog of crimes which are left for State and Municipal legislation.

4. The Act nowhere describes the particular matter as to which the fraud must be related other than for instance "by obtaining or aiding to obtain the payment or allowance of *any* false or fraudulent claim." In other words, the claim may be as to some matter in which the Government is in no way interested, it may be a strictly corporate or private matter and if it is a fraudulent claim of any nature against a corporation, whether arising out of something affecting the Government or otherwise, then the act applies. For instance, if the United States Government had one share of stock in a manufacturing company engaged in various and sundry manufactures and a party should present or try to obtain the payment of a fraudulent claim in regard to some matter in which the United States had no interest whatever except that indirectly and remotely its interest as a stockholder might be affected, then the party would be guilty of a crime. If such is the case there is another objection to the statute.

5. Under this amendment there is no way for a party dealing with a corporation to be advised as to whether he is committing a crime against the United States or against the State because nobody can be expected to at all times keep up with the question of whether or not the United States is interested in this or the other corporation as a stockholder. If the United States as pledgee of stock held title as a stockholder in the nature of a pledgee because somebody who was a stockholder had pledged his stock to

the Government and the Government had the stock transferred to it as pledgee, then this party would be guilty of a crime. The means therefore authorized by this Act of Congress is an arbitrary means and interferes with the rights reserved to the States to punish crimes committed against its citizens and private individuals.

6. Although in the lottery cases there was a particular matter within the power of Congress to regulate,—that is to regulate commerce, in this case there is no expressed provision in the constitution authorizing Congress to regulate fraud against the Government. It is an implied power of our Government that it can prevent frauds against its own Government and that it can punish for such frauds, but the means and the extent thereof must at least be reasonable, definite and certain and have some reasonable relation to the Government as a sovereign and not as an individual divested of all sovereignty. Whenever the Government or any branch thereof divests itself of its sovereign powers and occupies the position of an ordinary citizen, then its rights must be regulated and the means for enforcing the same or protecting same must be placed upon the rights of any ordinary citizen.

7. There are no allegations in the indictment limiting the act to a corporation under control of United States and Emergency Fleet Corporation is not shown to be a *public* corporation but a *private* corporation.

AUTHORITIES OF CONSTRUCTION ON ABOVE CONTENTIONS.

Chief Justice Marshall, in the case of U. S. vs. Wiltberger 5th Wheat. 76th-106 (5 L. Ed. page 42) announced in that case the principles of construction as to Acts of Congress, including the duty of the courts in construing such an Act, upon which decision this court has constantly relied from time to time. The opinion of Chief Justice Marshall in the last mentioned case, which is applicable to this case, was as follows:

> "On the part of the United States, the jurisdiction of the court is sustained, not so much on the extension

of the words, "high seas," as on that construction of the whole act which would engraft the words of the 8th section, descriptive of the place in which murder may be committed, on the 12th section, which describes the place in which manslaughter may be committed. This transfer of the words of one section to the other is, it has been contended, in pursuance of the obvious intent of the legislature; and in support of the authority of the court so to do, certain maxims, or rules for the construction of statutes have been quoted and relied on. It has been said, that although penal laws are to be construed strictly, the intention of the legislature must govern in their construction. That if a case be within the intention, it must be considered as if within the letter of the statute. So if it be within the reason of the statute."

"The rule that penal laws are to be construed strictly, is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department. It is the legislature, not the court, which is to define a crime, and ordain its punishment."

"It is said, that notwithstanding this rule, the intention of the law-maker must govern in the construction of penal, as well as other statutes. This is true. But this is not a new independent rule which subverts the old. It is a modification of the ancient maxim, and amounts to this, that though penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the legislature. The maxim is not to be so applied as to narrow the words of the statute to the exclusion of cases which those words, in their ordinary acceptation, or in that sense in which the legislature has obviously used them would comprehend. The intention of the legislature is to be collected from the words they employ. *Where there is no ambiguity in the words, there is no room for construction.* The case must be a strong one indeed, which would justify a court in departing from the plain meaning of words, especially in a penal act, in search of an intention which the words themselves did not suggest. To determine that a case is within the intention of a statute, its language must authorize us to say so. It would be dangerous, indeed, to carry the principle, that a case which is within the reason or mischief

of a statute, is within the provisions, so far as to punish a crime not enumerated in the statute, because it is of equal atrocity, or of kindred character, with those which are enumerated. If this principle has ever been recognized in expounding criminal law, it has been in cases of considerable irritation, which it would be unsafe to consider as precedents forming a general rule for other cases."

We contend that under the wording of this statute the courts cannot limit the meaning of the words used so as to carve out of the legislative enactment a crime by construing this statute to mean that it applies only under certain conditions and states of fact which are not expressed in the statutes. In other words there being no ambiguity in the meaning of the words of the statute and the legislature having attempted to define what constitutes crime, if in so attempting to define a crime Congress has exceeded its authority, then the courts cannot restrict and limit an unambiguous definition of a crime by limiting and restricting the words of the statute. It is a well and long established principle of law. "It is the legislature, not the court, which is to define a crime, and ordain its punishment."

U. S. vs. Wiltberger 5 Wheat. 76-95.
H. Hackfield & Co. vs. U. S. 197 U. S. 442-450.
Burton vs. U. S. 202 U. S. 377-378.

The above principle was also announced in the case of United States vs. Hartwell, 73 U. S. page 385-402 (18 L. Ed. page 833) in which the court said, referring to the construction of penal laws:

"We are not unmindful that penal laws are to be construed strictly. It is said that this rule is almost as old as construction itself. But whenever invoked it comes attended with qualifications and other rules no less important. It is by the light which each contributes that the judgment of the court is to be made up. The object in construing penal, as well as other statutes, is to ascertain the legislative intent. That constitutes the law. If the language be clear it is conclusive. There can be no construction where there is nothing to construe. The words must not be narrowed to the exclusion of what the Legislature intended to

embrace; but that intention must be gathered from the words, and they must be such as to leave no room for a reasonable doubt upon the subject. It must not be defeated by a forced and overstrict construction. The rule does not exclude the application of common sense to the terms made use of in the Act, in order to avoid an absurdity which the Legislature ought not to be presumed to have intended. When the words are general and include various classes of persons, there is no authority which would justify a court in restricting them to one class and excluding others, where the purpose of the statute is alike applicable to all. The proper course in all cases is to adopt that sense of the words which best harmonizes with the context and promotes, in the fullest manner, the policy and objects of the Legislature. The rule of strict construction is not violated by permitting the words of the statute to have their full meaning, or the more extended of two meanings, as the wider popular instead of the more narrow technical one; but the words should be taken in such a sense, bent neither one way nor the other, as will best manifest the legislative intent. U. S. v. Wiltberger, 5 Wheat., 96; U. S. v. Morris, 14 Pet., 475; U. S. v. Winn, 3 Sumn., 211; 1 Bish. Cr. Law, sec. 123; Bac. Abr., tit. Statute, 1."

The same principle was announced by the Supreme Court in the case of Cherokee Tobacco Company v. U. S. 78 U. S. page 616-624 (20 L. Ed. page 229) in which the court said:

"In Mackey v. Coxe, 18 How., 103 (59 U. S., XV., 301), it was held that The Cherokee country was a territory of the United States, within the meaning of this Act. The 107th session of the Act of 1868 extends the revenue laws only as to liquors and tobacco over the country in question. Nowhere would frauds to an enormous extent as to these articles be more likely to be perpetrated if this provision were withdrawn. Crowds, it is believed, would be lured thither by the prospect of illicit gain. This consideration, doubtless had great weight with those by whom the law was framed. The language of the section is as clear and explicit as could be employed. It embraces indisputably the Indian territories. Congress not having thought proper to exclude them, it is not for this court to make the exception. If the exception had been intended it would doubtless have been expressed. There being no ambiguity, there is no room for construction.

> It would be out of place. U. S. v. Wiltberger, 5 Wheat., 95. The section must be held to mean what the language imports. When a statute is clear and imperative, reasoning ab inconvenienti is of no avail. It is the duty of courts to execute it."

The same principle was announced in the case of Texas vs. John Chiles 88 U. S. page 488 (22 L. Ed. page 651) in which the court said:

> "The case is one where the language is so clear and comprehensive that there is no room for construction, and the duty of the court is simply to give it effect according to the plain import of the words. There should be no construction where there is nothing to construe. U. S. vs. Wiltberger, 5 Wheat. 76."

Again the Supreme Court in the case of U. S. vs. Steffens 100 U. S. pages 82-99 (trademark cases 25 L. Ed. page 553) announced the principles mentioned above, and because the Act of Congress in regard to trademarks did not upon its face show that it was limited to interstate commerce, made such act invalid as it did not show upon its face that it was limited to carrying out the execution of some power granted by the constitution of the United States to Congress and upon which Congress would have a right to legislate. In other words, the Act of Congress, being too broad and general, and not being limited as it should have been to interstate commerce, and the same being a penal statute, the Act was held to be invalid, and the courts were not allowed to restrict the plain and unambiguous meaning words of the act, giving the act a narrower meaning than the plain words used by Congress authorized. The court said in the above case:

> "It has been suggested that if Congress has power to regulate trade-marks used in commerce with foreign nations and among the several States, these statutes shall be held valid in that class of cases, if no further. To this there are two objections: first, the indictments in these cases do not show that the trade-marks which are wrongfully used were trade-marks used in that kind of commerce. Second, while it may be true that when one part of a statute is valid and constitutional

and another part is unconstitutional and void, the court may enforce the valid part where they are distinctly separable so that each can stand alone, it is not within the judicial province to give to the words used by Congress a narrower meaning than they are manifestly intended to bear in order that crimes may be punished which are not described in language that brings them within the constitutional power of that body. This precise point was decided in the case of the U. S. v. Reese, 92 U. S., 214 (XXIII., 563). In that case Congress had passed a statute punishing election officers who should refuse to any person lawfully entitled to do so the right to cast his vote at an election. This court was of the opinion that, as regarded the section of the statute then under consideration, Congress could only punish such denial when it was on account of race, color or previous condition of servitude."

"It was urged, however, that the more general description of the offense included the more limited one, and that the section was valid where such was in fact the cause of denial. But the court said, through the Chief Justice: 'We are not able to reject a part which is unconstitutional and retain the remainder, because it is not possible to separate that which is constitutional, if there be any such, from that which is not. The proposed effect is not to be attained by striking out, or disregarding words that are in the section, but by inserting words that are not there now. Each of the sections must stand as a whole, or fall altogether. The language is plain. There is no room for construction, unless it be as to the effect of the Constitution. The question, then to be determined is, whether we can introduce words of limitation into a penal statute so as to make it specific, when as expressed, it is general only. * * * To limit this statute as now asked for would be to make a new law, not to enforce an old one. This is no part of our duty.' If we should, in the case before us, undertake to make by judicial construction a law which Congress did not make, it is quite probable we should do what, if the matter were now before that body, it would be unwilling to do, namely: make a trademark law which is only partial in its operation, and which would complicate the rights which parties would hold, in some instances under the Act of Congress, and in others under state law. Cooley, Const. Lim., 178, 179; Com. v. Hitchings, 5 Gray, 482."

This case was followed by the case of Poindexter v.

Greenhow, 114th U. S. pages 270-306 (29 L. Ed. pages 197-198) where the court said:

> "It is undoubtedly true that there may be cases where one part of a statute may be enforced as constitutional, and another be declared inoperative and void, because unconstitutional; but these are cases where the parts are so distinctly separable that each can stand alone, and where the court is able to see and to declare, that the intention of the Legislature was that the part pronounced valid should be enforceable, even though the other part should fail. To hold otherwise would be to substitute for the law intended by the Legislature one they may never have been willing by itself to enact. An illustration of this principle is found in the Trade-Mark Cases, 100 U. S. 82, (Book 25, L. Ed. 550), where an Act of Congress, which it was claimed, would have been valid as a regulation of commerce with foreign Nations and among the States, was held to be void altogether, because it embraced all commerce, including that between citizens of the same State, which was not within the jurisdiction of Congress, and its language could not be restrained that that which was subject to the control of Congress. "If we should," said the court in that case (page 99), "in the case before us undertake to make, by judicial construction, a law which Congress did not make, it is quite probable we should do what, if the matter were now before that body, it would be unwilling to do."

In a later case of Baldwin vs. Franks 120th U. S. 678-707 (30 L. Ed. pages 766-771) Chief Justice Waite reviewed the foregoing cases and quoted the same with approval, coming to the conclusion that the Act of Congress was to be strictly construed, and the court quoted the Trade-Mark cases U. S. vs. Reese and U. S. vs. Harris, and the Virginia Coupon Case in 114th U. S. 305. The court refused to overrule the case of the U. S. vs. Harris.

In the case of U. S. vs. Fox 95 U. S. 670, 24 L. Ed. pages 538-540 the court said in construing an Act of Congress attempting to make it a crime for any person, who within three months before bankruptcy proceedings are commenced, under false color and pretense about carrying on business and dealing in the ordinary course of trade, obtains

on credit from any person any goods or chattels with intent to defraud, said that Congress had no authority to pass such an act. The court admitted that as to bankruptcy matters, Congress had authority to pass certain acts, and the court then used the following language:

> "To legislate for the prevention of frauds in either of these particulars, when committed in contemplation of bankruptcy, would seem to be within the competency of Congress. Any act, committed with a view of evading the legislation of Congress passed in the execution of any of its powers, or of fraudulently securing the benefit of such legislation, may properly be made an offense against the United States. But an act committed within a State, whether for a good or a bad purpose, or whether with an honest or criminal intent, cannot be made an offense against the United States, unless it have some relation to the execution of a power of Congress, or to some matter within the jurisdiction of the United States. An act not having any such relation is one in respect to which the State can alone legislate."
>
> "The act described in the 9th subdivision of section 5132 of the Revised Statutes is one which concerns only the State in which it is committed; it does not concern the United States. It is quite possible that the framers of the statute intended it to apply only to acts committed in contemplation of bankruptcy; but it does not say so, and we cannot supply qualifications which the Legislature has failed to express."

In the case of M'Cullough v. The State of Maryland, et al, the Supreme Court of the United States in 4th Wheat., pages 421, 423 (4 L. Ed. page 605) said:

> "We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the constitution must show to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end,

which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional."

"Should Congress, in the execution of its powers, adopt measures which are prohibited by the constitution; or *should Congress under the pretext of executing its powers, pass laws for the accomplishment of objects not entrusted to the government,* it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land. But where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the government, to undertake here to inquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. This court disclaims all pretensions to such a power."

In the case of U. S. vs. Reese 92 U. S. 214 (23 L. Ed.) Chief Justice Waite, in delivering the opinion of the court said, among other things, in construing an Act of Congress under the 15th Amendment in connection with a demurrer to an indictment, and as to what would be considered "appropriate legislation" for carrying out the purposes of the 15th Amendment:

"The 3d section does not, in express terms, limit the offense of an inspector of elections, for which the punishment is provided, to a wrongful discrimination on account of race, etc. This is conceded; but it is urged, that when this section is construed with those which precede it, and to which, as it claimed, it refers, it is so limited. The argument is, that the only wrongful act, on the part of the officer whose duty it is to receive or permit the requisite qualification, which can dispense with actual qualifications under the state laws, and substitute the prescribed affidavit therefor, is that mentioned and prohibited in section 2, to wit: discrimination on account of race, etc.; and that, consequently, section 3 is confined in its operation to the same wrongful discrimination."

"This is a penal statute and must be construed strictly; not so strictly, indeed, as to defeat the clear intention of Congress, but the words employed must be understood in the sense they were obviously used. U. S. v. Wiltberger, 5 Wheat., 85. If, taking the whole

statute together, it is apparent that it was not the intention of Congress thus to limit the operation of the Act, we cannot give it that effect."

"The elector under the provisions of the statute, is only required to state in his affidavit that he has been wrongfully prevented by the officer from qualifying. There are no words of limitation in this part of the section. In a case like this, if an affidavit is in the language of the statute, it ought to be sufficient both for the voter and the inspector. Laws which prohibit the doing of things and provides a punishment for their violation, should have no double meaning. A citizen should not unnecessarily be placed where, by an honest error in the construction of a penal statute, he may be subjected to a prosecution for a false oath, and an inspector of elections should not be put in jeopardy because, he, with equal honesty, entertains an opposite opinion. If this statute limits the wrongful act which will justify the affidavit to discrimination on account of race, etc., then a citizen who makes an affidavit that he has been wrongfully prevented by the officer, which is true in the ordinary sense of that term, subjects himself to indictment and trial, if not to conviction, because it is not true that he has been prevented by such a wrongful act of exclusion will justify the affidavit and give the right to vote without the actual performance of the prerequisite, then the inspector who rejects the vote because he reads the law in its limited sense and thinks it is confined to a wrongful discrimination on account of race, etc., subjects himself to prosecution, if not to punishment, because he has misconstrued the law. Penal statutes ought not to be expressed in language so uncertain. If the Legislature undertakes to define by statute a new offense and provide for its punishment, it should express its will in language that need not deceive the common mind. Every man should be able to know with certainty when he is committing a crime."

"But when we go beyond the 3d section and read the 4th, we find there no words of limitation, or reference even, that can be construed as manifesting any intention to confine its provisions to the terms of the Fifteenth Amendment. That section has for its object the punishment of all persons, who by force, bribery, etc., hinder, delay, etc., any person from qualifying or voting. In view of all these facts, we feel compelled to say that, in our opinion, the language of the 3d and

4th sections does not confine their operation to unlawful discriminations on account of race, etc. If Congress had the power to provide generally for the punishment of those who unlawfully interfere to prevent the exercise of the elective franchise without regard to such discrimination, the language of these sections would be broad enough for that purpose."

"It remains now to consider whether a statute, so general as this in its provisions, can be made available for the punishment of those who may be guilty of unlawful discrimination against citizens of the United States, while exercising the elective franchise, on account of their race, etc."

"There is no attempt in the sections now under consideration to provide specifically for such an offense. If the case is provided for at all, it is because it comes under the general prohibition against any wrongful act or unlawful obstruction in this particular. We are, therefore, directly called upon to decide whether a penal statute, enacted by Congress, with its limited powers, which is in general language broad enough to cover wrongful acts without as well as within the constitutional jurisdiction, can be limited by judicial construction so as to make it operate only on that which Congress may rightfully prohibit and punish. For this purpose, we must take these sections of the statute as they are. We are not able to reject a part which is unconstitutional and retain the remainer, because it is not possible to separate that which is unconstitutional, if there be any such, from that which is not. The proposed effect is not to be attained by striking out or disregarding words that are in the section, but by inserting those that are not now there. Each of the sections must stand as a whole, or fall altogether. The language is plain. There is no room for construction, unless it be as to the effect of the Constitution. The question, then, to be determined is, *whether we can introduce words of limitation into a penal statute so as to make it specific, when, as expressed, it is general only.*"

"It would certainly be dangerous if the Legislature could set a net large enough to catch all possible offenders and leave it to the courts to step inside and say who could be rightfully detained and who should be set at large. This would, to some extent, substitute the Judicial for the Legislative Department of the Government. The courts enforce the legislative will

when ascertained, if within the constitutional grant of power. Within its legitimate sphere, Congress is supreme and beyond the control of the courts; but if it steps *outside of its constitutional limitations and attempts that which is beyond its reach*, the courts are authorized to, and when called upon in due course of legal proceedings, must annul its encroachments upon the reserved power of the States and the people."

"*To limit* this statute in the manner now asked for *would be to make a new law, not to enforce an old one.* This is no part of our duty."

"We must, therefore, decide that Congress has not as yet provided by 'appropriate legislation' for the punishment of the offense charged in the indictment; and that the circuit court properly sustained the demurrers and gave judgment for the defendants."

Following the case of U. S. vs. Reese, the Supreme Court of the United States in the case of U. S. vs. Harris, 106 U. S. page 629, (27 L. Ed., pages 294-295) affirmed and quoted the case of U. S. vs. Reese and said:

"The indictment in the case charged two inspectors of a municipal election in the State of Kentucky with refusing to receive and count at such election the vote of William Garner, a citizen of the United States, of African descent. It was contended by the defendants, that it was not within the constitutional power of Congress to pass the section upon which the indictment was based. The attempt was made by the counsel for the United States to sustain the law as warranted by the 15th Amendment to the Constitution of the United States. But this court held it not to be appropriate legislation under that Amendment. The ground of the decision was that the sections referred to were *broad enough*, not only to punish those who hindered and delayed the enfranchised, colored citizen from voting, on account of his race, color, or previous condition of servitude, but also those who hindered or delayed the free, white citizen. The court, speaking by the Chief Justice, said: 'It would certainly be dangerous if the Legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained and who should be set at large. This would, to some extent, substitute the Judicial for the Legislative Department of the Government.

The courts enforce the legislative will, when ascertained, if within the constitutional grant of power. But if Congress steps outside of its constitutional limitation and attempts that which is beyond its reach, the courts are authorized to and when called upon must annul its encroachment upon the reserved rights of the States and the people.' "

"This decision is in point, and applying the principle established by it, it is clear that the legislation now under consideration cannot be sustained by reference to the 13th Amendment to the Constitution."

"There is another view which strengthens this conclusion. If Congress has constitutional authority, under the 13th Amendment, to punish a conspiracy between two persons to do an unlawful act, it can punish the act itself, whether done by one or more persons."

"A private person cannot make constitutions nor laws, nor can he with authority construe them, nor can he administer or execute them. The only way, therefore, in which one private person can deprive another of the equal protection of the laws is by the commission of some offense against the laws which protect the rights of persons, as by theft, burglary, arson, libel, assault or murder. If, therefore, we hold that section 5519 is warranted by the 13th Amendment, we should, by virtue of that Amendment, accord to Congress the power to punish every crime by which the right of any person to life, property or reputation is invaded. Thus, under a provision of the Constitution which simply abolished slavery and involuntary servitude, we should with few exceptions, invest Congress with power over the whole catalogue of crimes. A construction of the Amendment which leads to such a result is clearly unsound."

WORD ANY IS UNLIMITED, TOO BROAD; COURT CANNOT LIMIT TO MEET LIMITED POWER.

While it is admitted that Congress has the power to legislate to prevent fraud against the United States or any department or officer of the United States, our contention is that under the wording of this statute it cannot go to the extent of providing legislation to prevent a fraud against

"*any* corporation in which the United States of America is a stockholder." The principle to be applied is analogous to the principle which this court has repeatedly announced in connection with the commerce clause of the Constitution. Congress under the commerce clause may pass legislation creating crimes, but as said by this court in the case of Williams vs. Fears 179th U. S. 270-278 (45 L. Ed. page 190), the extent to which Congress may go and the general rule and its exceptions are set forth in the following language, which points out the distinction to be made:

> "Again, in Hooper v. California, 155 U. S. 648, 655, 39 L. Ed. 297, 300 5 Inters. Com. Rep. 207, it was held that a section of the Penal Code of California making it a misdemeanor for a person in that state to procure insurance for a resident in the state from an insurance company not incorporated under its laws, and which had not complied with its laws relative to insurance, was not a regulation of commerce. Mr. Justice White there adverts to the real distinction on which the general rule and its exceptions are based, "and which consists in the difference between interstate commerce or an instrumentality thereof on the one side, and the mere incidents which may attend the carrying on of such commerce on the other. This distinction has always been carefully observed, and is clearly defined by the authorities cited. If the power to regulate interstate commerce applied to all the incidents to which said commerce might give rise and to all contracts which might be made in the course of its transaction, that power would embrace the entire sphere of mercantile activity in any way connected with trade between the states, and would exclude state control over many contracts purely domestic in their nature."

In other words while Congress may legislate as to "fraud against the United States, or an instrumentality thereof on the one side," Congress may not as to "the mere incidence which may attend the perpetration of a fraud against the United States." This act not only as amended covers fraud against the United States and the instrumentality thereof, but it attempts to cover fraud against "any corporation in which the United States of America is a stockholder." That is it covers all of the incidents of the United

States doing business and fraud not against the United States, but against any corporation in which the United States is an incident to its doing business,—may be more or less interested as a stockholder in such corporation. The amended act does not cover, therefore, fraud against the United States or the instrumentality thereof, but it covers fraud against all corporations which are mere incidents and not necessarily under the wording of the statutes' instrumentality.

This act on principle is also controlled by the case of Howard vs. Illinois C. R. Co. 207th U. S. page 463-541 (52 L. Ed. pages 297-311). In that case Congress attempted, under the interstate commerce clause of the constitution to prescribe a liability for death or injury of any employee of an interstate carrier, which may result from the negligence of a fellow servant on account of the provisions of the act which covered "every common carrier engaged in trade or commerce" and also "any of its employees," and also "any of its officers, agents or employees," the same was held to be invalid because too broad and inclusive in its meaning. The amendment in this case uses the word "any corporation" in which the United States is "a stockholder." There are no words limiting or defining or restricting such a corporation as an instrumentality or an officer or a department or agency of the government. In the case mentioned above, the court, therefore, said:

> "Thus the liability of a common carrier is declared to be in favor of 'any of its employees.' As the word 'any' is unqualified, it follows that liability to the servant is coextensive with the business done by the employees whom the statute embraces; that is, it is in favor of any of the employees of all carriers who engage in interstate commerce. This also is the rule as to the one who otherwise would be a fellow servant, by whose negligence the injury or death may have been occasioned, since it is provided that the right to recover on the part of any servant will exist, although the injury for which the carrier is to be held resulted from 'the negligence of any of its officers, agents, or employees.' "
>
> "The act, then being addressed to all common carriers, engaged in interstate commerce, and imposing

a liability upon them in favor of any of their employees, without qualification or restriction as to the business in which the carriers or their employees may be engaged at the time of the injury, of necessity includes subjects wholly outside of the power of Congress to regulate commerce. Without stopping to consider the numerous instances where, although a common carrier is engaged in interstate commerce, such carrier may, in the nature of things, also transact business not interstate commerce, although such local business may indirectly be related to interstate commerce, a few illustrations showing the operation of the statute as to matters wholly independent of interstate commerce will serve to make clear the extent of power which is exerted by the statute."

"As the act thus includes many subjects wholly beyond the power to regulate commerce, and depends for its sanction upon that authority, it results that the act is repugnant to the Constitution, and cannot be enforced unless there be merit in the propositions advanced to show that the statute may be saved."

"So far as the face of the statute is concerned, the argument is this: That because the statute says carriers engaged in commerce between the states, etc., therefore the act should be interpreted as being exclusively applicable to the interstate commerce business, and none other, of such carriers, and that the words "any employee," as found in the statute, should be held to mean any employee when such employee is engaged only in interstate commerce. But this would require us to write into the statute words of limitation and restriction not found in it. But, if we could bring ourselves to modify the statute by writing in the words suggested, the result would be to restrict the operation of the act as to the District of Columbia and the territories. We say this because, immediately preceding the provision of the act concerning carriers engaged in commerce between the states and territories, is a clause making it applicable to "every common carrier engaged in trade or commerce in the District of Columbia or in any territory of the United States." It follows, therefore, that common carriers in such territories, even although not engaged in interstate commerce, are, by the act, made liable to 'any' of their employees, as therein defined. The legislative power of Congress over the District of Columbia and the territories being plenary, and not depending upon

the interstate commerce clause, it results that the provision as to the District of Columbia and the territories, if standing alone, could not be questioned. Thus it would come to pass, if we could bring ourselves to modify the statute by writing in the words suggested, that is, by causing the act to read, 'any employee when engaged in interstate commerce,' we would restrict the act as to the District of Columbia and the territories, and thus destroy it in an important particular. To write into the act the qualifying words, therefore, would be but adding to its provisions in order to save it in one aspect, and thereby to destroy it in another; that is, to destroy in order to save, and to save in order to destroy."

"The principles of construction invoked are undoubted, but are inapplicable. Of course, if it can be lawfully done, our duty is to construe the statute so as to render it constitutional. *But this does not imply, if the text of an act is unambiguous, that it may be rewritten to accomplish that purpose.* Equally clear is it, generally speaking, that where a statute contains provisions which are constitutional and others which are not, effect may be given to the legal provisions by separating them from the illegal. But this applies only to a case where the provisions are separable, and not dependent one upon the other, and does not support the contention that that which is indivisible may be divided. Moreover, even in a case where legal provisions may be severed from those which are illegal, in order to save, the rule applies only where it is plain that Congress would have enacted the legislation with the unconstitutional provisions eliminated. All these principles are so clearly settled as not to be open to controversy. They were all, after a full review of the authorities, restated and reapplied in a recent case. Illinois C. R. v. McKendree, 203 U. S. 514, 51 L. ed. 298, 27 Sup. Ct. Rep. 153, and authorities there cited."

"As the act before us, by its terms, related to *every* common carrier engaged in interstate commerce, and to *any* of the employees of every such carrier, thereby regulating every relation of a carrier engaged in interstate commerce with its servants among themselves, we are unable to say that the statute would have been enacted had its provisions been restricted to the limited relations of that character which it was within the power of Congress to regulate. On this subject the opinion in the Trade-Mark Cases, 100 U. S. 82, 25

L. Ed. 550, where an act of Congress concerning trademarks was held to be unconstitutional because too broad in its scope, is pertinent and instructive. The court said (page 99):

" 'If we should in the case before us, undertake to make, by judicial construction, a law which Congress did not make, it is quite probable we should to what, if the matter were now before that body, it would be unwilling to do, namely, make a trademark law which is only partial in its operation, and which would complicate the rights which parties would hold, in some instances under the act of Congress, and in others under state law. Cooley, Const. Lim. 178, 179; Com. v. Hitchings, 5 Gray, 482.' "

"It remains only to consider the contention which we have previously quoted, that the act is constitutional although it embraces subjects not within the power of Congress to regulate commerce, because one who engages in interstate commerce thereby submits all his business concerns to the regulating power of Congress. To state the proposition is to refute it. It assumes that, because one engages in interstate commerce, he thereby endows Congress with power not delegated to it by the Constitution; in other words, with the right to legislate concerning matters of purely state concern. It rests upon the conception that the Constitution destroyed that freedom of commerce which it was its purpose to preserve, since it treats the right to engage in interstate commerce as a privilege which cannot be availed of except upon such conditions as Congress may prescribe, even although the conditions would be otherwise, beyond the power of Congress. It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the states as to all conceivable matters which, from the beginning, have been, and must continue to be, under their control so long as the Constitution endures."

"Concluding, as we do, that the statute, whilst it embraces subjects within the authority of Congress to regulate commerce, also includes subjects not within its constitutional power, and that the two are so interblended in the statute that they are incapable of separation, we are of the opinion that the courts below rightly held the statute to be repugnant to the Consti-

tution and nonenforceable; and the judgments below are, therefore, affirmed."

The principles controlling this case are also to be found in the opinion of this court in the case of Keller vs. United States 213th U. S. pages 138-151 (53 L. Ed. pages 737-741) Chief Justice Brewer in delivering the opinion of the court in that case showed clearly that if an Act of Congress was so broad and inclusive as to transcend power of Congress in executing a power given under the Constitution, and that the Act of Congress amounted to an offense against the police power which was reserved by the states, then such an act was invalid. The question was not the power only, but the extent to which an Act of Congress might go in attempting to execute such power. If the language of the statute, or Act of Congress was so broad and inclusive as to cover the police power of the states, and was not limited and restricted to some matter provided for by the Constitution of the United States, then the Act was invalid. The court in its opinion said:

> "It is unnecessary to determine how far Congress may go in legislating with respect to the conduct of an alien while residing here, for there is no charge against one; nor to prescribe the extent of its power in punishing wrongs done to an alien, for there is neither charge nor proof of any such wrong. So far as the statute or indictment requires, or the testimony shows, she was voluntarily living the life of a prostitute, and was only furnished a place by the defendants to follow her degraded life. While the keeping of a house of ill-fame is offensive to the moral sense, yet that fact must not close the eye to the question whether the power to punish therefor is delegated to Congress or is reserved for the state. Jurisdiction over such an offense comes within the accepted definition of the police power. Speaking generally, that power is reserved to the states, for there is in the Constitution no grant thereof to Congress."
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> "In Patterson v. Kentucky, 97 U. S. 501, 503, 24 L. Ed. 1115, 1116, is this declaration:
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> " 'In the American constitutional system,' says Mr. Cooley, 'the power to establish the ordinary regulations of police has been left with the individual states, and

cannot be assumed by the national government.' Cooley, Const. Lim. 574. While it is confessedly difficult to mark the precise boundaries of that power, or to indicate, by any general rule, the exact limitations which the states must observe in its exercise, the existence of such a power in the states has been uniformly recognized in this court. Gibbons v. Ogden, 9 Wheat. 1, 6 L. Ed. 23; License Cases, 5 How. 504, 12 L. Ed. 256; Gilman v. Philadelphia, 3 Wall. 713, 18 L. Ed. 96; Henderson v. New York (Henderson v. Wickham) 92 U. S. 259, 23 L. Ed. 543; Hannibal & St. J. R. Co. v. Husen, 95 U. S. 465, 24 L. Ed. 527; Boston Beer Co. v. Massachusetts, 97 U. S. 25, 24 L. Ed. 989. It is embraced in what Mr. Chief Justice Marshall, in Gibbons v. Ogden, calls that 'immense mass of legislation' which can be most advantageously exercised by the states, and over which the national authorities cannot assume supervision or control."

"Further, as the rule of construction, Chief Justice Marshall, speaking of the court in the great case of M'Culloch v. Marylan, 4 Wheat. 316, 405, 4 L. Ed. 579, 601, declares:

" 'This government is acknowledged by all to be one of enumerated powers. The principle that it can exercise only the powers granted to it would seem too apparent to have required to be enforced by all those arguments which its enlightened friends, while it was depending before the people, found it necessary to urge. That principle is now universally admitted. But the question respecting the extent of the powers actually granted is perpetually arising, and will probably continue to arise, as long as our system shall exist.' "

"In Houston v. Moore, 5 Wheat. 1, 48, 5 L. Ed. 19, 30, Mr. Justice Story says:

" 'Nor ought any power to be sought, much less to be adjudged, in favor of the United States, unless it be clearly within the reach of its constitutional charter. Sitting here, we are not at liberty to add one jot of power to the national government beyond what the people have granted by the Constitution.' "

"Art. 10 of Amendments; New York v. Miln. 11 Pet. 102, 133, 9 L. Ed. 648, 660; License Cases, 5 How. 504, 608, 630, 12 L. Ed. 256, 303, 313; United States v. Dewitt, 9 Wall. 41, 44, 19 L. Ed. 593; 594; Patterson v. Kentucky, 97 U. S. 501, 503, 24 L. Ed. 1115, 1116; Barbier v. Connolly, 113 U. S. 27, 31, 28 L. Ed. 923,

924, 5 Sup. Ct. Rep. 357; Re Rahrer (Wilkerson v. Rahrer) 140 U. S. 545, 555, 35 L. Ed. 572, 574, 11 Sup. Ct. Rep. 865; United States v. E. C. Knight Co. 156 U. S. 1, 11, 39 L. Ed. 325, 328, 15 Sup. Ct. Rep. 249; Cooley, Const. Lim. 574."

"That there is a moral consideration in the special facts of this case, that the act charged is within the scope of the police power is immaterial, for, as stated, there is in the Constitution no grant to Congress of the police power. And the legislation must stand or fall according to the determination of the question of the power of Congress to control generally dealings of citizens with aliens. In other words, an immense body of legislation, which heretofore has been recognized as peculiarly within the jurisdiction of the states, may be taken by Congress away from them. Although Congress has not largely entered into this field of legislation, it may do so, if it has the power. Then we should be brought face to face with such a change in the internal conditions of this country as was never dreamed of by the framers of the Constitution. While the acts of Congress are to be liberally construed in order to enable it to carry into effect the powers conferred, it is equally true that prohibitions and limitations upon those powers should also be fairly and reasonably enforced. Fairbank v. United States, 181 U. S. 283, 45 L. Ed. 862, 21 Sup. Ct. Rep. 648. To exaggerate in the one direction and restrict in the other will tend to substitute one consolidated government for the present Federal system. We should never forget the declaration in Texas v. White, y Wall, 700, 725, 19 L. Ed. 227, 237, that 'the Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible states.' "

"The judgments are reversed, and the cases remanded to the District Court of the United States for the Northern District of Illinois, with instructions to quash the indictment."

As the amended act embraced *any* corporation in which the United States is a stockholder, and, therefore, all corporations whether instrumentalities or agencies of the United States, it is void as to this provision thereof, the same not being separable.

U. S. vs. Reese 92 U. S. 214 (23 L. Ed. 563).
Baldwin vs. Franks 120th 678 (30 L. Ed. 766).
Poindexter vs. Greenhow 114 U. S. 269, 304-305 (29 L. Ed. 185-197-198).
Ill. C. R. Co. vs. M. C. Kendree 203 U. S. 514 (51 L. Ed. 298).

In the case of James vs. Bowman 190th U. S. page 127-142 (47 L. Ed. pages 979-984) this court, in passing upon an Act of Congress for the punishment of individuals who by means of bribery prevent persons to whom the right of suffrage is granted by the 15th Amendment to the Constitution from exercising that right, said that such act could not be sustained as an exercise of the power granted to Congress by such Amendment, inasmuch as the operation thereof was manifestly enacted to punish the bribery at *all* elections State and Federal; and further that the same cannot be limited by judicial construction, for the purpose of sustaining its constitutionality to the bribery of votes at election for Federal offices, the court reviewed the previous decisions, which have been heretofore cited, showing that the act being too broad in general could not be limited by construction, thus allowing courts to enact legislation which would be constitutional when the act itself was unambiguous and clearly included within the meaning of its words and intentions on the part of Congress which was beyond the authority of Congress. The court concluded its opinion with the following statement:

> "We deem it unnecessary to add anything to the views expressed in these opinions. We are fully sensible of the great wrong which results from bribery at elections, and do not question the power of Congress to punish such offenses when committed in respect to the election of Federal officials. At the same time it is all-important that a criminal statute should define clearly the offense which it purports to punish, and that when so defined it should be within the limits of the power of the legislative body enacting it. Congress has no power to punish bribery at all elections. The limits of its power are in respect to elections in which the nation is directly interested, or in which some mandate of the national Constitution is disobeyed; and courts are not at liberty to take a criminal statute,

broad and comprehens sive in its terms and in these terms beyond the powe er of Congress, and change it to fit some particular tra nsaction which Congress might have legislated for if it t has seen fit."

"The judgment of t the District Court is affirmed."

In the case of Ill. C. R. (Co. vs. M. C. Kendree 208 U. S. pages 514-530 (51 L. Ed. p pages 298-305) in passing upon certain quarantined regulati ions promulgated by the Secretary of Agriculture under t the Act of Congress held that such regulations were void a as being in excess of the powers conferred by that act whic h on their face they apply as well to matters within the s state control as to Federal control, that as to both intras state and also interstate commerce. The court reviewed l the cases of U. S. vs. Reese, the Trade-mark Cases, quotin ng from the same and held that inasmuch as "for aught that t appears upon the face of the order the secretary intended d it to apply to all commerce, and whether he would have made such an order, as strictly limited to interstate comme erce, we have no means of knowing." The court then concluded its opinion with the following language:

> "This order of the se ecretary undertaking to make a stringent regulation wit th highly penal consequences, is singular in character and includes commerce wholly within the state, there by exceeding any authority which Congress intende d to confer upon him by the Act in question if the s ame is a valid enactment."

The court declined, althou gh urged in that case, to introduce words of limitation int o this penal regulation so as to make it specific. So in thi is case the court cannot introduce words of limitation int o this penal statute to make it specific and apply in a limit ted and restricted way to only some particular kind of corpo oration when the act says any corporation. The words of th e statute are plain and unambiguous, and cannot, therefor re, be limited or restricted by this court, or by any court. To allow this would be to allow each court to determ e when and under what circumstances a fraud became criminal against the United States when the United State s was a stockholder in a cor-

poration. Congress should have limited and specified the conditions under which it would be shown to constitute a crime in the nature of a fraud against the United States when dealing with a corporation in which the United States was a stockholder. Under the wording of the act the only condition or restriction or limitation to make such a crime is the mere allegation that the United States is a stockholder in such corporation. This in and of itself is not sufficient to show a fraud against the United States. It would be a fraud against a corporation under the police powers and municipal laws of the states, but not a fraud against the United States solely by reason of the fact that the United States was a stockholder in the corporation.

If the act under consideration had been worded as follows: "Any corporation in which the United States of America is a stockholder *and* the stock of which corporation is solely and exclusively owned by the United States *and* which corporation is solely and exclusively acting as an agency and instrumentality of the United States *and* not otherwise," then the act might be held to be sufficiently broad to cover a fraud against the United States. Congress, however, did not limit nor restrict the act in the manner suggested, or in any other manner so as to show a fraud against the United States. Under the wording of the act it was a fraud which is properly comprehended by municipal regulation and under the police powers of the State.

JNO. W. DODGE,

Attorney for LeRoy W. Walter.

ERROR to a judgment of the District Court sustaining a demurrer to an indictment.

Mr. Solicitor General Beck for the United States.

Mr. Jno. W. Dodge, for defendant in error, submitted. The courts cannot limit the meaning of the words used so as to carve out a crime, by construing the statute to mean that it applies only under certain conditions of fact which are not expressed, and thus render it constitutional. *United States* v. *Wiltberger*, 5 Wheat. 76; *Hackfield & Co.* v. *United States*, 197 U. S. 442; *Burton* v. *United States*, 202 U. S. 377; *United States* v. *Hartwell*, 6 Wall. 385; *Cherokee Tobacco Co.* v. *United States*, 11 Wall. 616; *Texas* v. *Chiles*, 21 Wall. 488; *Trade-Mark Cases*, 100 U. S. 82; *Poindexter* v. *Greenhow*, 114 U. S. 270; *Baldwin* v. *Franks*, 120 U. S. 678; *United States* v. *Fox*, 95 U. S. 670; *McCulloch* v. *Maryland*, 4 Wheat. 421; *United States* v. *Reese*, 92 U. S. 214; *United States* v. *Harris*, 106 U. S. 629.

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is an indictment in three counts. The first charges a conspiracy to commit an offense against the United States by making and presenting for payment a fraudulent claim against the United States Emergency Fleet Corporation, a corporation formed under the laws of the District of Columbia, of which the United States owned all the stock. The second count charges a like conspiracy to obtain the payment of fraudulent claims against the same corporation. The third count charges a conspiracy to defraud the United States. All the counts are based upon the same facts, and the first two are brought under the Act of October 23, 1918, c. 194; 40 Stat. 1015; amending § 35 of the Criminal Code and,

taken with § 37, making it a crime to conspire to present for, or to obtain, payment of a fraudulent claim against "any corporation in which the United States of America is a stockholder." The third count is based upon § 37 of the Criminal Code, Act of March 4, 1909, c. 321; 35 Stat. 1088, punishing conspiracy "to defraud the United States in any manner or for any purpose." A demurrer to all the counts was sustained by the District Court on the grounds that the Act of 1918 must be taken literally, as embracing any corporation in which the United States owned a single share of stock, and so construed went beyond the power of Congress, and that under *United States* v. *Strang*, 254 U. S. 491, the fraud alleged was not a fraud upon the United States.

Taking up first the Act of 1918, it was enacted after Congress contemplating the possibility of the war that ensued had authorized the formation of the Fleet Corporation under laws deriving their authority from earlier statutes of the United States. We are not informed whether at that time the United States owned stock in corporations other than the instrumentalities created with reference to the needs of that war, but we cannot doubt that the act was passed with a special view to them. *United States* v. *Bowman*, 260 U. S. 94, 101, 102. The United States can protect its property by criminal laws, and its constitutional power would not be affected if it saw fit to create a corporation of its own for purposes of the Government, under laws emanating directly or indirectly from itself, and turned the property over to its creature. The creator would not be subordinated to its own machinery. That is the case before us. If the law in terms dealt only with the Emergency Fleet Corporation it would be beyond question. See *United States Grain Corporation* v. *Phillips*, 261 U. S. 106, 113. It is said however that the words "any corporation in which

the United States of America is a stockholder" are too clear to be cut down. *Butts* v. *Merchants Transportation Co.*, 230 U. S. 126, 136, 137. But against the cases that decline to limit the generality of words in order to save the constitutionality of an act are many others that imply a limit, and, when the circumstances permit, the latter course will be adopted. Language as absolute as that before us was limited in *The Abby Dodge*, 223 U. S. 166, 172: "Any sponges taken . . . from the waters of the Gulf of Mexico or Straits of Florida." See *Texas* v. *Eastern Texas R. R. Co.*, 258 U. S. 204, 217. We are of opinion that the Act of 1918 should be construed to refer only to corporations like the Fleet Corporation that are instrumentalities of the government and in which for that reason it owns stock. In *United States* v. *Bowman*, 260 U. S. 94, the present objection was not raised by counsel or by the Court.

As to the third count, while it is true that the corporation is not the United States, *United States* v. *Strang*, 254 U. S. 491, the contemplated fraud upon the corporation if successful would have resulted directly in a pecuniary loss to the United States, and even more immediately would have impaired the efficiency of its very important instrument. We are of opinion that it was within the words of § 37, "defraud the United States in any manner," and that on this as on the other point the decision below was wrong. *Haas* v. *Henkel*, 216 U. S. 479, 480. *United States* v. *Barnow*, 239 U. S. 74, 79.

Judgment reversed.

UNITED STATES *v.* WALTER.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

No. 20. Argued October 3, 1923.—Decided October 22, 1923.

1. The Act of October 23, 1918, so amending § 35 of the Criminal Code as to make it a crime to make or present, for payment, a fraudulent claim against "any corporation in which the United States of America is a stockholder," should be construed to refer only to corporations, like the Fleet Corporation, that are instrumentalities of the Government and in which, for that reason, it owns stock. P. 17.
2. The act, so construed, is constitutional. *Id.*
3. A conspiracy to "defraud the United States in any manner," as denounced by § 37 of the Criminal Code, includes a conspiracy to defraud the Fleet Corporation, which, if successful, would result directly in pecuniary loss to the United States (holding all the stock) and impair the efficiency of the corporation as a governmental instrumentality. P. 18.

291 Fed. 662, reversed.